

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/1. SYSTEM OF REGISTRATION/(1) INTRODUCTION/601. The system of registration.

## **LAND CHARGES (**

### **1. SYSTEM OF REGISTRATION**

#### **(1) INTRODUCTION**

##### **601. The system of registration.**

The Land Charges Act 1972<sup>1</sup> and the Local Land Charges Act 1975<sup>2</sup> together provide for the continuation of the system of protecting by registration certain rights or claims affecting land established by the Land Charges Act 1925<sup>3</sup>. The Land Charges Act 1925 effected a consolidation<sup>4</sup> and extension<sup>5</sup> of legislation initiated to give recognition to the fact that there are numerous burdens capable of affecting land which are not usually or necessarily discoverable either by inspection of property or by customary investigation of a documentary title<sup>6</sup>. However, the legislation does not impose a statutory duty to effect registration, as distinct from providing consequences of not doing so<sup>7</sup>.

In pursuance of the statutory regulation of the doctrine of notice<sup>8</sup>, registration under or by reference to the Land Charges Act 1972 is the effective means by which persons entitled to the benefit of such burdens as are within the field of authorised registration<sup>9</sup> may obtain protection by making their claims known to the world<sup>10</sup>. At the same time, the system of registration gives to a purchaser a complementary protection from those burdens which ought to be but are not registered at the time of purchase<sup>11</sup>.

Except for local land charges<sup>12</sup>, the system is superseded as respects registered land by registration of title<sup>13</sup>.

Although there are still a significant number of unregistered titles there is a clear policy to eliminate unregistered land<sup>14</sup>. The Land Registration Act 2002 has extended the triggers for compulsory first registration and has provided incentives for voluntary registration<sup>15</sup>. Similarly, that statute's reshaping of the law of adverse possession<sup>16</sup> provides encouragement for holders of unregistered land<sup>17</sup> to register title. There has been a longstanding general acceptance that land charges registration was only ever a temporary measure and subject to many defects<sup>18</sup>. However, it may be argued that complete registration of title will not be easily achieved due to the complexity of title in some areas and the fact that not all dealings with land are caught by the Land Registration Act 2002<sup>19</sup>.

1 The Land Charges Act 1972 came into force on 29 January 1973: s 19(2); Land Charges Act 1972 (Commencement) Order 1972, SI 1972/2058.

2 The Local Land Charges Act 1975 came into force on 1 August 1977: s 20(3); Local Land Charges Act 1975 (Commencement) Order 1977, SI 1977/984.

3 The Land Charges Act 1925 was finally repealed by the Local Land Charges Act 1975: see s 19(1), Sch 2.

4 ie as part of the real property legislation of 1925.

5 The extension covers many common and enduring claims relative to such matters as puisne mortgages and restrictive covenants which were not formerly registrable.

6 As to investigation of title see SALE OF LAND.

7 Eg if a landlord grants an option to purchase the reversion, or agrees to grant a lease, the fact that the other party to the contract has not registered it as an estate contract is no ground for the reduction of damages for breach of the contract by the lessor's selling his estate without granting the lease, for there was no duty to effect registration: see *Wright v Dean* [1948] Ch 686, [1948] 2 All ER 415; *Hollington Bros Ltd v Rhodes* [1951] 2 All ER 578n, [1951] WN 437.

8 See the Law of Property Act 1925 s 198 (as amended), s 199; para 616 post; and EQUITY vol 16(2) (Reissue) PARAS 570, 577, 583.

9 The field is now wide enough to embrace a number of matters which should appear on an abstract of title: cf note 5 supra.

10 The statutory effect of registration was formerly in all cases actual notice and generally remains so: see the Law of Property Act 1925 s 198 (as amended); para 616 post; and EQUITY vol 16(2) (Reissue) PARAS 570, 577. However, the position is modified in relation to contracts for sale made on or after 1 January 1970: see the Law of Property Act 1969 s 24 (as amended); and PARA 616 post.

11 See the Law of Property Act 1925 s 199; para 616 post; and EQUITY vol 16(2) (Reissue) PARA 583. See also the Land Charges Act 1972 s 4 (as amended) (unregistered land charges other than local land charges: see PARAS 626, 634, 642-644 post); s 5(7) (unregistered pending actions: see PARA 650 post); s 6(4), (5) (as amended) (unregistered writs and orders: see PARA 658 post); s 7(2) (unregistered deeds of arrangement: see PARA 664 post); and Sch 1 para 4 (unregistered annuities: see PARA 669 post). As to unregistered local land charges see the Local Land Charges Act 1975 s 10 (as amended); and PARA 694 post.

12 See PARA 696 text and note 7 post.

13 In registration pursuant to the Land Registration Act 1925 (repealed), the Land Registration Act 1936 (repealed), the Land Registration and Land Charges Act 1971 Pt 1 (ss 1-4) (repealed), the Land Registration Act 1986 (largely repealed), or the Land Registration Act 2002. As to the exemption of registered land from the land charges registers see PARA 605 post; and LAND REGISTRATION vol 26 (2004 Reissue) PARA 807. See also the Land Charges Act 1972 s 14(1), (2) (s 14(1) as amended); and PARA 605 post. For land charges created by an instrument inducing compulsory registration of title see s 14(3) (as amended); and PARA 605 text and note 3 post.

14 Policy is unambiguously in favour of complete registration of title: see *Land Registration for the Twenty-First Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 1.6 (where the Law Commission states a desire to see the end of the existence of two systems of conveyancing). See also LAND REGISTRATION vol 26 (2004 Reissue) PARA 801 et seq.

15 As to compulsory registration see the Land Registration Act 2002 s 4; and LAND REGISTRATION vol 26 (2004 Reissue) PARA 827. As to voluntary registration see s 3; and LAND REGISTRATION vol 26 (2004 Reissue) PARA 826. Note also that s 5 allows the Lord Chancellor to extend the list of triggering events in s 4: see LAND REGISTRATION vol 26 (2004 Reissue) PARA 827. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

16 See LAND REGISTRATION vol 26 (2004 Reissue) PARA 1021 et seq.

17 Eg local authorities, large rural estates, universities and colleges and the Church of England.

18 Eg notably registration of interests against the name of the proprietor and the resulting problems for conveyancing and the marketability of the land affected.

19 Eg the leases subject to compulsory registration are only those of more than seven years from the date of grant: see the Land Registration Act 2002 s 4(1)(a), (c), (2); and LAND REGISTRATION vol 26 (2004 Reissue) PARA 827. However, previously the period was 21 years and there is an intention to reduce it further to three years.

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**602. Where registration is effected.**

All charges and liabilities registrable under the Land Charges Act 1972<sup>1</sup> are registrable in the Land Charges and Agricultural Credits Department of Her Majesty's Land Registry<sup>2</sup>.

<sup>1</sup> As to the exemption of registered land from the land charges registers see PARA 605 post; and see also LAND REGISTRATION vol 26 (2004 Reissue) PARA 807.

<sup>2</sup> The administration of the Land Registry's departments (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 1064 et seq) is under the immediate control of the Chief Land Registrar (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 1066); and, unless the context otherwise requires, references in this title to the 'registrar' and the 'registry' are references to the Chief Land Registrar and Her Majesty's Land Registry respectively: see the Land Charges Act 1972 s 17(1). For the purposes of any provision requiring or authorising anything to be done at or delivered or sent to the registry, if the registrar so directs, any reference to the registry must be read as a reference to such office of the registry (whether in London or elsewhere) as may be specified in the direction: Land Charges Act 1972 s 17(2). 'Principal office' means the office of the Land Charges Department in Plymouth or such other office as the registrar may direct to be the principal office: see the Land Charges Rules 1974, SI 1974/1286, r 2(2). At the date at which this volume states the law, the address of the Land Charges Department is: Plumer House, Tailyour Road, Crownhill, Plymouth, Devon PL6 5HY.

As to the registration of agricultural charges see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1331. As to the proper authorities for the registration of local land charges see the Local Land Charges Act 1975 s 3(1) (as amended); and PARA 688 post.

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### **603. Application to the Crown.**

The provisions of the Land Charges Act 1972 and the Local Land Charges Act 1975 bind the Crown, but nothing in either Act is to be construed as rendering land owned by or occupied for the purposes of the Crown subject to any charge to which, independently of either Act, it would not be subject<sup>1</sup>.

References in the Land Charges Act 1972 to restrictive covenants include references to certain conditions, stipulations or restrictions imposed on or after 1 January 1926<sup>2</sup> for the protection of the amenities of royal parks, gardens and palaces<sup>3</sup>.

1 Land Charges Act 1972 s 15(1); Local Land Charges Act 1975 s 20(2). As to the meaning of 'land' see PARA 607 note 6 post. As to Crown land see CROWN PROPERTY vol 12(1) (Reissue) PARA 201 et seq.

2 ie under the Law of Property Act 1922 s 137: see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 565.

3 Land Charges Act 1972 s 15(2).

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#### **604. Subordinate legislation.**

The Lord Chancellor<sup>1</sup> has made rules<sup>2</sup> for the purpose of carrying the Land Charges Act 1972 into effect. These rules are complemented by separate rules relating to local land charges<sup>3</sup> and rules as to fees<sup>4</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 The rules are the Land Charges Rules 1974, SI 1974/1286 (as amended), made under the Land Charges Act 1972 s 16(1). Rules have also been made under the Insolvency Act 1986 s 412, applied by the Land Charges Act 1972 s 16(2) (amended by the Insolvency Act 1985 s 235(1), Sch 8 para 21(4)). These rules are the Insolvency Rules 1986, SI 1986/1925, rr 6.13, 6.34(2)(a), 6.35, 6.43, 6.46(2)(a), and 6.47 (rr 6.35, 6.47 amended by SI 1991/495): see further BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

3 See the Local Land Charges Rules 1977, SI 1977/985 (as amended), made under the Local Land Charges Act 1975 s 14 (as amended); and PARA 675 post. After consultation with any local authority appearing to him to be concerned (see s 18(4)), the Lord Chancellor may by order made by statutory instrument repeal or amend any provision in a local Act passed before the Local Land Charges Act 1975 and relating to local land charges which appears to him to be inconsistent with, or to require modification in consequence of any provisions of the Act (see s 18(1), (2)). Such an order is subject to annulment in pursuance of a resolution of either House of Parliament and may be varied or revoked by a subsequent order: s 18(3). At the date at which this volume states the law, no such order had been made.

4 See the Land Charges Fees Order 1990, SI 1990/323; the Land Charges Fees Rules 1990, SI 1990/327 (as amended); and the Local Land Charges Rules 1977, SI 1977/985, r 14, Sch 3 (Sch 3 as substituted). The concurrence of the Treasury is necessary for rules relating to fees: see the Land Charges Act 1972 s 16(1); and the Local Land Charges Act 1975 s 14(1). As to fees see PARA 612 post.

### **UPDATE**

#### **604 Subordinate legislation**

NOTE 2--Insolvency Act 1986 s 412 and Land Charges Act 1972 s 16(2) further amended: Constitutional Reform Act 2005 Sch 4 paras 75, 189, Sch 18 Pt 2.

NOTE 3--Functions of the Lord Chancellor under the 1975 Act s 14(1), so far as it relates to the power to make rules for prescribing fees and the manner of their payment, and so far as those functions are exercisable in relation to Wales, have been transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044.

NOTE 4--Local Land Charges Act 1975 s 14(1) amended: Constitutional Reform Act 2005 Sch 4 para 85. SI 1977/985 Sch 3 amended: SI 2009/2494.

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### **605. Registered land.**

The Land Charges Act 1972 does not apply to instruments or matters required to be registered or re-registered on and after 1 January 1926, if and so far as they affect registered land<sup>1</sup>, and can be protected under the Land Registration Act 2002<sup>2</sup>. Neither does it apply to a land charge created on or after 27 July 1971 by an instrument which induces compulsory registration of the title to the estate affected by the charge<sup>3</sup>.

The Land Registration Act 2002<sup>4</sup> deals with pending land actions, writs and orders and deeds of arrangement the priority of which must be protected by means of an entry in the registers<sup>5</sup>, either as a notice or a restriction<sup>6</sup>, so that in practice any search of the registers maintained under the Land Charges Act 1972 is rendered unnecessary in relation to registered land<sup>7</sup>. However, the provisions of the Local Land Charges Act 1975 apply whether or not the land affected is registered land<sup>8</sup>.

No obligation is imposed upon the registrar<sup>9</sup> to ascertain whether or not any instrument or matter affects registered land<sup>10</sup>.

1 'Registered land' has the same meaning as in the Land Registration Act 2002 (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 939): Land Charges Act 1972 s 17(1) (amended by the Land Registration Act 2002 s 133, Sch 11 para 10(4)).

2 Land Charges Act 1972 s 14(1) (amended by the Land Registration Act 2002 Sch 11 para 10(1), (2)). As to the effect on the subsequent registration of land of failing to register an option to renew a lease as a land charge see *Kitney v MEPC Ltd* [1978] 1 All ER 595, [1977] 1 WLR 981, CA.

3 Where an instrument executed on or after 27 July 1971 conveys, grants or assigns an estate in land and creates a land charge affecting that estate, the Land Charges Act 1972 does not apply to the land charge, so far as it affects that estate, if under the Land Registration Act 2002 s 7 (effect of failure to comply with requirement of registration: see LAND REGISTRATION vol 26 (2004 Reissue) PARA 829), the instrument will, unless the necessary application for registration under that Act is made within the time allowed by or under s 6, become void so far as respects the conveyance, grant or assignment of that estate: Land Charges Act 1972 s 14(3) (amended by the Land Registration Act 2002 Sch 11 para 10(1), (3)). 'Conveyance' means a mortgage, charge, lease, assent, vesting declaration, vesting instrument, release and every other assurance of property, or of an interest in property, by any instrument except a will; and 'convey' has a corresponding meaning: Land Charges Act 1972 s 17(1). 'Vesting instrument' means a vesting deed, vesting assent or, where the land affected remains settled land, a vesting order: Settled Land Act 1925 s 117(1)(xxxi); definition applied by the Land Charges Act 1972 s 17(1). For the meanings of 'vesting deed', 'vesting assent' and 'vesting order' see the Settled Land Act 1925 s 117(1)(xxxi); and SETTLEMENTS. 'Will' includes a codicil: Law of Property Act 1925 s 205(1)(xxxi); definition applied by the Land Charges Act 1972 s 17(1). For the purposes of the Settled Land Act 1925, 'settled land' includes land deemed to be settled land: s 117(1)(xxiv). With limited exceptions, it is no longer possible to create new settlements under the Settled Land Act 1925: see the Trusts of Land and Appointment of Trustees Act 1996 s 2; and REAL PROPERTY vol 39(2) (Reissue) PARA 64 et seq; SETTLEMENTS vol 42 (Reissue) PARA 676; TRUSTS vol 48 (2007 Reissue) PARA 601. As to settlements generally see SETTLEMENTS.

4 See the Land Registration Act 2002 s 87: see LAND REGISTRATION vol 26 (2004 Reissue) PARAS 1019-1020. These topics are those, in the case of unregistered land, that may be registered under the Land Charges Act 1972 ss 5-7 (ss 5-6 as amended) (see PARAS 647, 654, 662 post) although bankruptcy matters are covered under the Land Registration Act 2002 s 86.

The previous provision was the Land Registration Act 1925 s 59 (repealed) which covered much the same area as the Land Registration Act 2002 s 87 but provided for such matters to be protected by a caution against dealings. Such cautions have been abolished by the Land Registration Act 2002.

5 As to the conclusiveness of registration see *ibid* s 58; and LAND REGISTRATION vol 26 (2004 Reissue) PARA 859.

6 Of these matters a deed of arrangement and an order appointing a receiver are to be protected by a restriction rather than a notice. As to notices and restrictions see LAND REGISTRATION vol 26 (2004 Reissue) PARA 992 et seq.

7 As to searches of the land charges registers see generally para 696 et seq post. See also the Land Registration Act 2002 s 86(7); and PARA 651 post.

8 See PARA 696 text to notes 5-7 post.

9 As to the meaning of 'registrar' see PARA 602 note 2 ante.

10 Land Charges Act 1972 s 14(2). The exclusion of ill-founded entries from the land charges registers remains the responsibility of intending applicants for registration: see the Land Charges Rules 1974, SI 1974/1286, r 22; and PARA 611 post.

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### **606. Charges by companies.**

Formerly, if a land charge for securing money was created by a company, it was registered in the register of charges kept by the registrar of companies<sup>1</sup>, and that took the place of registration under the Land Charges Act 1925<sup>2</sup>. These provisions do not apply to any charge created by a company on or after 1 January 1970 other than one created as a floating charge<sup>3</sup>.

<sup>1</sup> See the Companies Act 1985 ss 395, 396, 397, 398 (ss 395, 396 as amended); and COMPANIES vol 15 (2009) PARA 1279 et seq.

<sup>2</sup> Land Charges Act 1925 s 10(5); Law of Property Act 1969 s 26 (both repealed). See also COMPANIES vol 15 (2009) PARAS 1272, 1279.

<sup>3</sup> See the Land Charges Act 1972 s 3(7), (8) (as amended); and PARA 697 post. This provision replaces the Land Charges Act 1925 s 10(5) and the Law of Property Act 1969 s 26 (both repealed). See also COMPANIES vol 15 (2009) PARAS 1272, 1279.



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## **(2) THE REGISTERS AND INDEX**

### **607. Registers and index to be kept.**

The registrar<sup>1</sup> must keep at the registry<sup>2</sup> in the prescribed<sup>3</sup> manner the following registers, namely:

- 1 (1) land charges<sup>4</sup>;
- 2 (2) pending actions<sup>5</sup>;
- 3 (3) writs and orders affecting land<sup>6</sup>;
- 4 (4) deeds of arrangement affecting land<sup>7</sup>;
- 5 (5) annuities<sup>8</sup>.

The registrar must also keep an index<sup>9</sup> by which all entries made in any of the registers can readily be traced<sup>10</sup>.

Registers of local land charges are kept by local authorities designated as registering authorities for that purpose<sup>11</sup>.

1 As to the meaning of 'registrar' see PARA 602 note 2 ante.

2 As to the meaning of 'registry' see PARA 602 note 2 ante.

3 'Prescribed' means prescribed by rules made pursuant to the Land Charges Act 1972: s 17(1).

4 Ibid s 1(1)(a). As to land charges see PARAS 622-646 post.

5 Ibid s 1(1)(b). As to pending actions see PARAS 647-653 post.

6 Ibid s 1(1)(c). 'Land' includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over or derived from land, but not an undivided share in land; and 'hereditament' means real property which, on an intestacy occurring before 1 January 1926, might have devolved on an heir: s 17(1). Cf the meaning of 'land' in the Law of Property Act 1925 s 205(1)(ix) (as amended) (see PARA 616 note 5 post). See also *Taylor v Taylor* [1968] 1 All ER 843, [1968] 1 WLR 378, CA. As to writs and orders affecting land see PARAS 654-661 post.

7 Land Charges Act 1972 s 1(1)(d). 'Deed of arrangement' has the same meaning as in the Deeds of Arrangement Act 1914 s 1 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 860); Land Charges Act 1972 s 17(1). As to deeds of arrangement affecting land see PARAS 662-666.

8 Ibid s 1(1)(e). For the meaning of 'annuity' see PARA 667 post. As to annuities see PARAS 667-670 post.

9 'Index' includes any device or combination of devices serving the purpose of an index: ibid s 1(7).

10 Ibid s 1(1).

11 See the Local Land Charges Act 1975 s 3(1) (as amended); and PARA 688 post.

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**608. Inspection of the registers.**

Any person may, on completion of the prescribed form<sup>1</sup> and on payment of the prescribed fee<sup>2</sup>, inspect an entry in the register<sup>3</sup> at the principal office<sup>4</sup> or at such other office as the registrar may direct<sup>5</sup>.

1 The prescribed form is Form K21: Land Charges Rules 1974, SI 1974/1286, rr 2(3), 3(2), Sch 2 Form K21.

2 The prescribed fee for inspection of an entry in the register is £1 per entry: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 4. As to fees see PARA 612 post.

3 As to the registers see PARA 607 ante.

4 For the meaning of 'principal office' see PARA 602 note 2 ante.

5 Land Charges Rules 1974, SI 1974/1286, r 3(2). As to searches rather than inspection of the register see PARAS 696-704 post.

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### **(3) REGISTRATION GENERALLY**

#### **(i) Effecting Registration**

##### **609. Name registers.**

The registers kept in pursuance of the Land Charges Act 1972 are registers of names<sup>1</sup>, and registration is effected in the name of the estate owner<sup>2</sup> or other person whose land<sup>3</sup> or estate or interest is intended to be affected by it<sup>4</sup>. A person entitled to have the legal estate<sup>5</sup> conveyed to him is not an estate owner<sup>6</sup>.

Where a person has died and (1) a land charge<sup>7</sup>; (2) a pending land action<sup>8</sup>; or (3) a writ or order affecting land<sup>9</sup> created before his death would apart from his death have been registered in his name, it must be so registered notwithstanding his death<sup>10</sup>.

1 As to the registers see PARA 607 ante. In the case of local land charges, the registration is against the land affected: see PARA 675 post. As to the contents of the local land charges registers see PARA 676 et seq post.

2 'Estate owner' has the same meaning as in the Law of Property Act 1925 (see s 205(1)(v); and REAL PROPERTY vol 39(2) (Reissue) PARA 47); Land Charges Act 1972 s 17(1) (amended by the Finance Act 1975 s 52(1), Sch 12 paras 2, 18(1), (6); and the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4). By the combined operation of the Law of Property Act 1925 ss 1(1)(b), 205(1)(xxvii), a tenant from year to year is included in 'estate owner': *Sharp v Coates* [1949] 1 KB 285, [1948] 2 All ER 871, CA; and see PARA 632 note 1 post. 'Name of the estate owner' in this context means the name as disclosed by the conveyance to him or her; registration should be effected and searches made against that name even though further versions of the name may appear on a birth certificate or elsewhere: *Standard Property Investment plc v British Plastics Federation* (1985) 53 P & CR 25. See also *Oak Co-operative Building Society v Blackburn* [1968] Ch 730, [1968] 2 All ER 117, CA, where it was held that a registration in a version of an estate owner's full names was not a nullity against a purchaser who did not search at all or searched in an incorrect name; *Diligent Finance Co Ltd v Alleyne* (1972) 23 P & CR 346, where a prior charge registered against the incorrect name of the estate owner was held not to rank ahead of a subsequent legal charge.

3 As to the meaning of 'land' see PARA 607 note 6 ante.

4 For particulars of what the various registers are required to contain see the Land Charges Rules 1974, SI 1974/1286, rr 2(2), 3(1), Sch 1 (as amended); and PARA 623 post.

5 'Legal estate' means an estate, interest or charge, in or over land (subsisting or created at law) which is by the Law of Property Act 1925 authorised to subsist or to be created as a legal estate: ss 1(4), 205(1)(x) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4); Land Charges Act 1972 s 17(1). See REAL PROPERTY vol 39(2) (Reissue) PARA 47.

6 See *Barrett v Hilton Developments Ltd* [1975] Ch 237, [1974] 3 All ER 944, CA, where it was held that it is the circumstances existing at the time of registration that are relevant. It seems that where an estate owner enters into an agreement for sale or a similar agreement and in the agreement reserves to himself some right, such as a right of pre-emption, which is itself capable of registration as a land charge, the only proper means of protecting that right is to register it as a land charge of the appropriate class against his own name.

7 See PARAS 622-646 post.

8 For the meaning of 'pending land action' see PARA 647 note 2 post.

9 See PARAS 654-661 post.

10 Land Charges Act 1972 ss 3(1A), 5(4A), 6(2A) (added by the Law of Property (Miscellaneous Provisions) Act 1994 s 15(1)-(5)). These provisions do not apply to applications for registration made before 1 July 1995 (ie the commencement date of the Law of Property (Miscellaneous Provisions) Act 1994 s 15) but without prejudice

to a person's right to make a new application after that date: s 15(5). Where an application is made by virtue of heads (1)-(3) in the text to register a matter in the name of a person who has died, the applicant must complete the relevant form (see the Land Charges Rules 1974, SI 1974/1286, rr 2(3), 19A (as added), Sch 2) as if: (1) the reference to particulars of the estate owner on the form were to the particulars which the applicant would have given if the person who has died were still living; and (2) the reference to the estate owner's title were to the title to the estate affected or intended to be affected by the registration: Land Charges Rules 1974, SI 1974/1286, r 19A (added by SI 1995/1355). 'Application' includes requisition: Land Charges Rules 1974, SI 1974/1286, r 2(2).

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### **610. Application for registration.**

Every application for registration must be made in the prescribed<sup>1</sup> form<sup>2</sup> and contain the prescribed particulars<sup>3</sup>. Except as otherwise provided<sup>4</sup>, applications<sup>5</sup> for registration should not be accompanied or supported by any deed, document or plan<sup>6</sup>. An application must be accompanied by the prescribed fee, unless that fee is debited by the registrar to a credit account<sup>7</sup>.

An application for registration or rectification (other than one made by a practising solicitor or relating to a Class F land charge<sup>8</sup>) must, unless the registrar otherwise directs, be supported by a statutory declaration in the prescribed form<sup>9</sup> by the person on whose behalf the application is made<sup>10</sup>. Unless the registrar otherwise directs, a separate form of application or priority notice must be used for each entry in a register and for each full name<sup>11</sup> in respect of which an entry is required to be made, renewed, cancelled or rectified<sup>12</sup>.

Where an application for registration, or an entry in a register, relates to an instrument or matter which is outside the scope of the Land Charges Act 1972<sup>13</sup>, the registrar may refuse that application or, as the case may be, cancel that entry<sup>14</sup>. For this purpose, the registrar may require a person applying for registration or his solicitor to certify that the land which is the subject of the application is not registered land<sup>15</sup>.

1 For the meaning of 'prescribed' see PARA 607 note 3 ante.

2 Unless the registrar otherwise directs, no forms except those sold under arrangements made with Her Majesty's Stationery Office or with such supplier as the registrar may from time to time approve may be accepted for registration: Land Charges Rules 1974, SI 1974/1286, r 26. As to the meaning of 'registrar' see PARA 602 note 2 ante. As to the prescribed forms see note 6 infra. As to Her Majesty's Stationery Office see STATUTES vol 44(1) (Reissue) PARAS 1249, 1250. For the prescribed forms see rr 2(3), 5, Sch 2 Forms K1-K5. For a continuation of an application form see Sch 2 Form K10. The prescribed forms may be used with such variations as in the registrar's opinion are required: r 24(1). This is without prejudice to any powers of the registrar to promulgate additional forms for use under the Land Charges Act 1972 or the Land Charges Rules 1974, SI 1974/1286: r 24(2).

3 Land Charges Act 1972 s 1(2).

4 Ie by the Land Charges Rules 1974, SI 1974/1286 (as amended) or the appropriate application form.

5 As to the meaning of 'application' see PARA 609 note 10 ante.

6 Land Charges Rules 1974, SI 1974/1286, r 21. Every written application must, unless the registrar otherwise directs, be sent by pre-paid post to, or delivered by hand to the principal office: r 20(1). For the meaning of 'principal office' see PARA 602 note 2 ante. As to registration of a land charge see further PARA 640 post; as to registration of a pending action see PARA 648 post; as to registration of a writ or order affecting land see PARA 656 post; and as to registration of a deed of arrangement affecting land see PARA 662 post. As to acknowledgment see PARA 621 post.

7 Ibid r 20(2). The fee on an application for registration is £1 per name: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 1. As to fees see PARA 612 post.

8 'Class F land charge' means a charge affecting any land by virtue of the Family Law Act 1996 Pt IV (ss 30-63) (as amended): Land Charges Act 1972 s 2(7) (amended by the Family Law Act 1996 s 66(1), Sch 8 Pt III para 47). See PARA 638 post.

9 For the prescribed form see the Land Charges Rules 1974, SI 1974/1286, r 6, Sch 2 Form K14.

10 Ibid r 6.

11 It is desirable to give all names in full: *Dunn v Chapman* [1920] 2 Ch 474. As to the registers see PARA 607 ante. As to the effect of registration in a variation of the estate owner's name see PARA 609 note 2 ante.

12 Land Charges Rules 1974, SI 1974/1286, r 25.

13 Is an instrument or matter which is excluded by the Land Charges Act 1972 s 14 (as amended): see PARA 605 ante.

14 Land Charges Rules 1974, SI 1974/1286, r 13(1).

15 Ibid r 13(2). This is without prejudice to the provisions of the Land Charges Act 1972 s 14(2) (see PARA 605 ante): Land Charges Rules 1974, SI 1974/1286, r 13(2). For the meaning of 'registered land' see PARA 605 note 1 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/1. SYSTEM OF REGISTRATION/(3) REGISTRATION GENERALLY/(i) Effecting Registration/611. Registrar's duty on registration.

### **611. Registrar's duty on registration.**

If an application has been duly completed<sup>1</sup> in accordance with the Land Charges Act 1972 and the rules made under it<sup>2</sup>, then, except in the case of an application for cancellation or rectification of a registration<sup>3</sup>, the registrar<sup>4</sup> is not concerned to inquire into or otherwise verify the accuracy or validity of any matter or thing stated or appearing in any notice given or application made to him<sup>5</sup>.

1 As to the meaning of 'application' see PARA 609 note 10 ante. As the applications are themselves bound up to form the several registers (see PARA 607 ante), the registrar will take any necessary administrative action to ensure that applications are complete in all material respects and prima facie in order; however, the exclusion of ill-founded entries remains entirely the responsibility of persons seeking to register: see the Land Charges Rules 1974, SI 1974/1286, r 22.

2 For the rules made under the Insolvency Act 1986 s 412 (as amended) see PARA 604 ante.

3 As to these applications see PARAS 619-620 post.

4 As to the meaning of 'registrar' see PARA 602 note 2 ante.

5 See the Land Charges Rules 1974, SI 1974/1286, r 22. This is without prejudice to the provisions of r 13 (see PARA 610 ante): r 22.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/1. SYSTEM OF REGISTRATION/(3) REGISTRATION GENERALLY/(i) Effecting Registration/612. Fees.

## **612. Fees.**

Every fee<sup>1</sup> which accompanies an application<sup>2</sup> is to be paid in money, in accordance with prescribed rules<sup>3</sup> and must be paid<sup>4</sup> in cash or by means of a postal order crossed and made payable to Her Majesty's Land Registry<sup>5</sup>. Any person or firm having a credit account<sup>6</sup> may request the registrar, on any application, to debit the requisite fee to that account<sup>7</sup>. If the registrar debits a fee to a credit account, it is to be treated as due payment of that fee<sup>8</sup>. When a person or firm having a credit account makes an application which is not accompanied by a fee and does not contain a request for the fee to be debited to that account, the registrar may, if he thinks fit, nevertheless accept the application and debit the fee to that person's or that firm's credit account<sup>9</sup>.

In relation to local land charges<sup>10</sup>, the specified fees payable for the registration, variation or cancellation of entries, and for searches and official certificates of search, must be pre-paid<sup>11</sup>.

1 'Fee' means a fee specified in the Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 (Sch 1 amended by SI 1994/286): Land Charges Fees Rules 1990, SI 1990/327, r 1(2).

2 As to the meaning of 'application' see PARA 609 note 10.

3 I.e. the Land Charges (Fees) Order 1990, SI 1990/323.

4 I.e. except as mentioned in the Land Charges Fees Rules 1990, SI 1990/327, r 4 (as amended) or as the registrar may otherwise allow: r 3. As to the meaning of 'registrar' see PARA 602 note 2 ante.

5 Ibid r 3. See also the Land Charges (Fees) Order 1990, SI 1990/323, art 2.

6 'Credit account' means an account authorised by the registrar for the purpose of providing credit facilities for the payment of fees: Land Charges Fees Rules 1990, SI 1990/327, r 1(2). As to the authorisation and maintenance of credit accounts see r 4(4), Sch 2.

7 Ibid r 4(1).

8 Ibid r 4(3).

9 Ibid r 4(2) (amended by SI 1994/286).

10 As to local land charges see generally para 671 et seq post.

11 As to the fees see the Local Land Charges Rules 1977, SI 1977/985 (as amended); the Local Land Charges Rules 1977, SI 1977/985, r 14, Sch 3 (as substituted); and PARA 675 et seq post.

## **UPDATE**

### **612 Fees**

NOTE 11--SI 1977/985 Sch 3 amended: SI 2009/2494.



Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/1. SYSTEM OF REGISTRATION/(3) REGISTRATION GENERALLY/(i) Effecting Registration/613. Priority of registration.

### **613. Priority of registration.**

Every priority notice<sup>1</sup> and application<sup>2</sup> for registration or renewal of registration or rectification given or made in accordance with prescribed rules<sup>3</sup> are, having been received in the principal office<sup>4</sup> between 15.00 hours on one day<sup>5</sup> and 15.00 hours on the next day, deemed to have been given or made at the same time, namely immediately before 15.00 hours on the second of those days<sup>6</sup>.

1 As to priority notices see the Land Charges Act 1972 s 11; and PARA 614 post.

2 As to the meaning of 'application' see PARA 609 note 10 ante.

3 See the Land Charges Rules 1974, SI 1974/1286 (as amended).

4 For the meaning of 'principal office' see PARA 602 note 2 ante.

5 'Day' means a day on which the principal office is open to the public: Land Charges Rules 1974, SI 1974/1286, r 2(2).

6 Ibid r 8(1).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/1. SYSTEM OF REGISTRATION/(3) REGISTRATION GENERALLY/(i) Effecting Registration/614. Priority notices.

#### **614. Priority notices.**

A person intending to make an application for the registration of a contemplated charge, instrument or other matter in pursuance of the Land Charges Act 1972 or any rule made under it may give a priority notice in the prescribed form<sup>1</sup> at least 15 days<sup>2</sup> before the registration is to take effect<sup>3</sup>. The priority notice is entered in the register to which the intended application when made will relate<sup>4</sup>. If the application for registration is presented within 30 days<sup>5</sup> of the registration of that notice and refers to it in the prescribed manner<sup>6</sup>, the registration takes effect as if it had been made at the time when the charge, instrument or matter was created, entered into, made or arose, and the date at which the registration so takes effect is deemed to be the date of registration<sup>7</sup>. Where:

- 6 (1) any two charges, instruments or matters are contemporaneous; and
- 7 (2) one of them (whether or not protected by a priority notice) is subject to or dependent on the other; and
- 8 (3) the latter is protected by a priority notice,

the subsequent or dependent charge, instrument or matter is deemed to have been created, entered into or made, or to have arisen, after the registration of the other<sup>8</sup>.

1 For the prescribed form see the Land Charges Rules 1974, SI 1974/1286, rr 2(3), 4, Sch 2 Form K6. For the meaning of 'prescribed' see PARA 607 note 3 ante. The registration fee for registration of a priority notice is £1 per name: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 3. As to fees see also PARA 612 ante.

2 See the Land Charges Act 1972 s 11(6)(a). The relevant number of days may be such other number as may be prescribed: see s 11(6). At the date at which this volume states the law, no other number has been prescribed. Days when the registry is not open to the public are excluded: see s 11(6). As to the meaning of 'registry' see PARA 602 note 2 ante.

3 Ibid s 11(1).

4 Ibid s 11(2). As to the registers see PARA 607 ante.

5 See ibid s 11(6)(b). As to the variation and calculation of the number of days see further note 2 supra.

6 To obtain the priority conferred by a priority notice an application for registration must, in order to comply with ibid s 11(3), refer to that notice by citing the official reference number allocated to it: see the Land Charges Rules 1974, SI 1974/1286, r 7. As to the meaning of 'application' see PARA 609 note 10 ante.

7 Land Charges Act 1972 s 11(3). The date of registration recorded on a register under the Land Charges Rules 1974, SI 1974/1286, r 3(1) (see PARA 623 post) is the date of the day on which the application is deemed to have been made, notwithstanding that the entry is made pursuant to a priority notice: r 8(2). For the meaning of 'day' see PARA 613 note 5 ante.

8 Land Charges Act 1972 s 11(4). One object of the system of registering priority notices (which was originally introduced by the Law of Property (Amendment) Act 1926 s 4 (repealed)) was to obviate the difficulty arising in consequence of the Land Charges Act 1925 s 13(2) (repealed). By reason of that provision (which was similar in effect to the provision now contained in the Land Charges Act 1972 s 4(6) (as amended) (see PARA 634 post)), where land was conveyed subject to restrictive covenants and the conveyance was followed immediately by a second conveyance, eg a mortgage, the restrictive covenants were void against the mortgagee for want of registration. The system also enables an official certificate of search to be conclusive at the date of a conveyance: see s 11(5); and PARA 701 post.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/1. SYSTEM OF REGISTRATION/(3) REGISTRATION GENERALLY/(i) Effecting Registration/615. Registration in more than one register.

### **615. Registration in more than one register.**

Where any charge or other matter is registrable in more than one of the registers kept under the Land Charges Act 1972<sup>1</sup>, it is sufficient if it is registered in one of them, and if it is so registered the person entitled to the benefit of it is not prejudicially affected by any provision of that Act as to the effect of non-registration in any other such register<sup>2</sup>.

Where any charge or other matter is registrable in a register kept under the Land Charges Act 1972 and was also, before 1 August 1977<sup>3</sup>, registrable in a local land charges register<sup>4</sup>, then, if before that date it was registered in the appropriate local land charges register, it is treated for the purposes of the provisions as to the effect of non-registration in that Act as if it had been registered in the appropriate register; and any certificate setting out the result of an official search of the appropriate local land charges register<sup>5</sup> has effect in relation to it as if it were a certificate setting out the result of an official search under the Act<sup>6</sup>.

1 As to the registers see PARA 607 ante.

2 Land Charges Act 1972 s 1(3) (substituted by the Local Land Charges Act 1975 s 17(1)(a)). As to the effect of non-registration see PARAS 642-644 post.

3 I.e. the commencement date of the Local Land Charges Act 1975: see s 20(3); and the Local Land Charges Act 1975 (Commencement) Order 1977, SI 1977/984.

4 As to local land charges see PARA 671 et seq post. As to the register see PARA 675 et seq post.

5 As to official certificates of search for local land charges see PARA 705 post.

6 Land Charges Act 1972 s 1(3A) (added by the Local Land Charges Act 1975 s 17(1)(a)). As to official searches under the Land Charges Act 1972 see PARAS 696-704 post.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/1. SYSTEM OF REGISTRATION/(3) REGISTRATION GENERALLY/(ii) Effect of Registration/616. Registration as notice.

## **(ii) Effect of Registration**

### **616. Registration as notice.**

Generally, the registration of any instrument<sup>1</sup> or matter in any register kept under the Land Charges Act 1972<sup>2</sup> or any local land charges register<sup>3</sup> is deemed to constitute actual notice<sup>4</sup> of that instrument or matter, and of the fact of that registration, to all persons and for all purposes connected with the land<sup>5</sup> affected as from the date of registration or other prescribed date<sup>6</sup>, and so long as the registration continues in force<sup>7</sup>.

However, where under a contract for sale or any disposition of any estate or interest in land the title to which is not registered under the Land Registration Act 2002<sup>8</sup> or any enactment replaced by it any question arises whether the purchaser<sup>9</sup> had knowledge, at the time of entering into the contract, of a registered land charge<sup>10</sup>, that question is determined by reference to his actual knowledge<sup>11</sup> and without regard to the provisions under which registration is deemed to constitute actual notice<sup>12</sup>. Where any estate or interest with which that contract is concerned is affected by a registered land charge and the purchaser, at the time of entering into the contract, had not received notice and did not otherwise actually know that the estate or interest was affected by the charge, any provision of the contract is void so far as it purports to exclude the operation of this provision<sup>13</sup> or to exclude or restrict any right or remedy that might otherwise be exercisable by the purchaser on the ground that the estate or interest is affected by the charge<sup>14</sup>. A purchaser is entitled to compensation in certain cases where a charge was registered against the name of an estate owner who was not a party to any transaction or concerned in any event comprised in the relevant title<sup>15</sup>.

Conversely, a purchaser<sup>16</sup> is not prejudicially affected by notice of any instrument or matter capable of registration under statute<sup>17</sup>, which is void or not enforceable against him by reason of its non-registration<sup>18</sup>. Thus a purchaser who has actual notice is not bound by it in the absence of registration<sup>19</sup>, unless he is guilty of fraud<sup>20</sup>. Deemed notice of a registered land charge is not sufficient to support a criminal conviction for actions in breach of that land charge<sup>21</sup>. However, a land charge registered in a version of the full name of the estate owner is not a nullity against a purchaser who does not search at all or who searches in a name which is not the correct full name of the estate owner<sup>22</sup>.

The statute will not be allowed to be used as a means by which injustice may be perpetrated where, in accordance with established principles of acquiescence or estoppel, an estate owner would be bound by rights arising in equity which are not the subject of registration<sup>23</sup>.

1 'Instrument' does not include a statute, unless the statute creates a settlement: Law of Property Act 1925 s 205(1)(viii). With limited exceptions, it is no longer possible to create new settlements under the Settled Land Act 1925: see the Trusts of Land and Appointment of Trustees Act 1996 s 2; and REAL PROPERTY vol 39(2) (Reissue) PARA 64 et seq; SETTLEMENTS vol 42 (Reissue) PARA 676; TRUSTS vol 48 (2007 Reissue) PARA 601.

2 As to the registers see PARA 607 ante.

3 As to local land charges see PARA 671 et seq post.

4 As to the equitable principle of notice see EQUITY vol 16(2) (Reissue) PARA 576 et seq.

5 'Land' includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other

corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over, or derived from land; and 'mines and minerals' includes any strata or seam of minerals or substances in or under any land, and powers of working and getting the same; and 'manor' includes a lordship; and 'hereditament' means any real property which on intestacy occurring before the commencement of the Law of Property Act 1925 might have devolved on an heir: s 205(1)(ix) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4).

6 'Other prescribed date' refers to the advantage gained by giving a priority notice for registration of a contemplated instrument or matter, at least 15 days before registration is to take effect and presenting the application for registration within 30 days of the priority notice: see the Land Charges Act 1972 s 11(1), (3). As to priority notices see PARA 614 ante.

7 Law of Property Act 1925 s 198(1) (amended by the Local Land Charges Act 1975 s 17(2), Sch 1). The Law of Property Act 1925 s 198 (as amended) operates without prejudice to the provisions of the Act respecting the making of further advances by a mortgagee (see s 94 (as amended); and MORTGAGE vol 77 (2010) PARAS 264-265), and applies only to instruments and matters required or authorised to be registered in any such register: s 198(2) (amended by the Local Land Charges Act 1975 Sch 1). 'Mortgagee' includes a chargee by way of legal mortgage and any person from time to time deriving title under the original mortgagee: Law of Property Act 1925 s 205(1)(xvi). Section 198 (as amended) applies only to registers kept under the Land Charges Act 1972 or any local land charges register and does not apply to registered land: see PARA 605 ante. Moreover, the effect of possession of documents relating to a legal estate in land is not affected by the provisions of the Law of Property Act 1925: see s 13. As to mortgages generally see MORTGAGE.

8 As to registration of title to land see LAND REGISTRATION.

9 For these purposes, 'purchaser' includes a lessee, mortgagee or other person acquiring or intending to acquire an estate or interest in land: Law of Property Act 1969 s 24(3).

10 For these purposes, 'registered land charge' does not include a local land charge: *ibid* s 24(3).

11 For these purposes, any knowledge acquired in the course of a transaction by a person who is acting as counsel, or as solicitor or other agent, for another is treated as the knowledge of that other: *ibid* s 24(4).

12 *Ibid* s 24(1) (amended by the Land Registration Act 2002 s 133, Sch 11 para 9). The provisions referred to in the text are those of the Law of Property Act 1925 s 198 (as amended) (see the text to notes 1-7 *supra*): see the Law of Property Act 1969 s 24(1) (amended by the Land Registration Act 2002 s 133, Sch 11 para 9). The Law of Property Act 1925 s 24 (as amended) does not apply to contracts made before 1 January 1970: see s 24(5).

13 *Ibid* s 24(1) (as amended).

14 *Ibid* s 24(2). As to the limited application of s 24 (as amended) see note 12 *supra*.

15 See *ibid* s 25(1) (as amended); and PARA 617 post. For the meaning of 'relevant title' see PARA 617 note 7 post.

16 For these purposes, 'purchaser' means a purchaser in good faith for valuable consideration, and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property; in reference to a legal estate it includes a chargee by way of legal mortgage; and where the context so requires it includes an intending purchaser: see the Law of Property Act 1925 s 205(1)(xxi). Cf the definition in the Land Charges Act 1972, where 'purchaser' means any person (including a mortgagee or lessee) who, for valuable consideration, takes any interest in land or in a charge on land: s 17(1). The former definition requires good faith but the latter does not, except as further restricted in the case of petitions and receiving orders in bankruptcy (see s 5(8) (as amended), s 6(5) (as substituted); and PARAS 650, 658 post), and the provisions of the Law of Property Act 1925 s 199(1)(i) must, it seems, be construed in the light of the definition contained in the Land Charges Act 1972 so as to provide, apart from the above-mentioned excepted cases and the case of pending actions (see PARA 650 post), protection to purchasers whether or not they acted in good faith. According to the construction put on the Middlesex Registry Act 1708 in *Le Neve v Le Neve* (1747) Amb 436, a provision that an unregistered conveyance was void against a subsequent purchaser was not enforced if the subsequent purchaser had notice of it, although the notice had to be so clearly proved as to make it fraudulent in the purchaser to set up the non-registration: *Wyatt v Barwell* (1815) 19 Ves 435 at 439; *Agra Bank Ltd v Barry* (1874) LR 7 HL 135. Later the tendency was to construe the Registration Acts strictly (see *Re Monolithic Building Co, Tacon v Monolithic Building Co* [1915] 1 Ch 643, CA), and it seems that the equitable construction adopted in *Le Neve v Le Neve* *supra* might not apply to the Land Charges Act 1972 (see *Hollington Bros Ltd v Rhodes* [1951] 2 All ER 578n, [1951] WN 437). As to constructive notice in relation to systems of registration see further EQUITY vol 16(2) (Reissue) PARA 581; cf the text and note 23 *infra*.

17 The statutes referred to in the text are the Land Charges Act 1925, or any enactment which replaces it (ie the Land Charges Act 1972 and the Local Land Charges Act 1975: see PARA 601 ante), under which non-registration renders any instrument or other matter void or not enforceable against a purchaser: see the Law of Property Act 1925 s 199(1)(i).

18 Ibid s 199(1)(i). As to the position of purchasers in relation to unregistered land charges see PARAS 642-644 post; as to unregistered pending actions see PARA 650 post; as to unregistered writs and orders see PARA 658 post; as to unregistered deeds of arrangement see PARA 664 post; as to unregistered annuities see PARA 669 post; and as to unregistered local land charges see PARA 694 post.

19 *Edwards v Edwards* (1876) 2 ChD 291, CA (bill of sale); *Black v Williams* [1895] 1 Ch 408 (mortgage on ship); *Re Monolithic Building Co, Tacon v Monolithic Building Co* [1915] 1 Ch 643, CA (mortgage by company); *Hollington Bros Ltd v Rhodes* [1951] 2 All ER 578n, [1951] WN 437 (contract to grant an underlease); *Beesly v Hallwood Estates Ltd* [1960] 2 All ER 314, [1960] 1 WLR 549 (option to renew lease) (affd on another point [1961] Ch 105, [1961] 1 All ER 90, CA). See further note 16 supra.

20 However, it is not fraud for the purchaser to take advantage of his legal rights: *Re Monolithic Building Co, Tacon v Monolithic Building Co* [1915] 1 Ch 643 at 663, CA, per Lord Cozens-Hardy MR, and at 669 per Phillimore LJ. Subsequent registration of the title to the land affected by a charge does not have the effect of reviving that charge if it has first become void for non-registration as a land charge, even where notice of the charge is entered as an incumbrance on the register of title: see *Kitney v MEPC Ltd* [1978] 1 All ER 595, [1977] 1 WLR 981, CA. As to land charges created by an instrument inducing compulsory registration of title see the Land Charges Act 1972 s 14(3) (as amended); and PARA 605 note 3 ante. As to compulsory registration of title see LAND REGISTRATION vol 26 (2004 Reissue) PARA 827 et seq.

21 Actual knowledge of the registered land charge is required where knowledge is an essential ingredient of an offence: *Wrekin District Council v Shah* (1986) 150 JP 22, sub nom *Barber v Shah* 17 HLR 584.

22 *Oak Co-operative Building Society v Blackburn* [1968] Ch 730, [1968] 2 All ER 117, CA; and see *Diligent Finance Co Ltd v Alleyne* (1972) 23 P & CR 346; *Standard Property Investment plc v British Plastics Federation* (1985) 53 P & CR 25; and PARA 609 ante.

23 See *ER Ives Investment Ltd v High* [1967] 2 QB 379, [1967] 1 All ER 504, CA. See ESTOPPEL.

## UPDATE

### 616 Registration as notice

NOTE 16--Law of Property Act 1925 s 205(1)(xxi) amended: Civil Partnership Act 2004 Sch 27 para 7.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/1. SYSTEM OF REGISTRATION/(3) REGISTRATION GENERALLY/(ii) Effect of Registration/617. Compensation for loss due to undisclosed land charges.

### **617. Compensation for loss due to undisclosed land charges.**

Where a purchaser of any estate or interest in land under a disposition<sup>1</sup> has suffered loss by reason that the estate or interest is affected by a registered land charge<sup>2</sup>, the purchaser is entitled to compensation for the loss if certain conditions are satisfied<sup>3</sup>. The conditions are that: (1) the date of completion<sup>4</sup> was after the commencement of the Law of Property Act 1969<sup>5</sup>; (2) on that date the purchaser had no actual knowledge of the charge<sup>6</sup>; and (3) the charge was registered against the name of an owner of an estate in the land who was not as owner of any such estate a party to any transaction, or concerned in any event, comprised in the relevant title<sup>7</sup>.

Any compensation for loss must be paid by the registrar, and where the purchaser of the estate or interest in question has incurred expenditure for the purpose of:

- 9 (a) securing that the estate or interest is no longer affected by the registered land charge or is so affected to a less extent; or
- 10 (b) obtaining compensation,

the amount of the compensation must include the amount of the expenditure (so far as it would not otherwise fall to be treated as compensation for loss) reasonably incurred by the purchaser for that purpose<sup>8</sup>.

Any proceedings for the recovery of compensation must be begun in the High Court<sup>9</sup>; and if that court dismisses a claim to compensation it must not order the purchaser to pay the registrar's costs unless it considers that it was unreasonable for the purchaser to begin the proceedings<sup>10</sup>.

Where compensation has been claimed<sup>11</sup> in respect of a registered land charge<sup>12</sup>, the registrar must make such entries in or amendments and additions to the relevant register<sup>13</sup> and the index<sup>14</sup> as he deems necessary in order to bring the charge to the notice of any person who inspects that register, or requires a search to be made in the index, in relation to the estate or interest affected by the charge<sup>15</sup>.

If compensation has been paid where the purchaser would have had knowledge of the registered land charge but for the fraud of any person, the registrar, on behalf of the Crown, may recover the amount paid from that person<sup>16</sup>.

1 The Law of Property Act 1969 s 25 (as amended) applies to the following dispositions: (1) any sale or exchange and, subject to s 25(10), (11) (see notes 2, 4, 6-7 infra), any mortgage of an estate or interest in land (s 25(9)(a)); (2) any grant of a lease for a term of years derived out of a leasehold interest (s 25(9)(b)); (3) any compulsory purchase, by whatever procedure, of land (s 25(9)(c)); and (4) any conveyance of a fee simple in land under the Leasehold Reform Act 1967 Pt I (ss 1-37) (as amended) (Law of Property Act 1969 s 25(9)(d)).

Section 25 (as amended) does not apply to the grant of a term of years derived out of the freehold or the mortgage of such a term by the lessee; and references in s 25 (as amended) to a purchaser are to be construed accordingly: s 25(9). 'Mortgage' includes any charge: s 25(10).

2 For these purposes, 'registered land charge' means any instrument or matter registered, otherwise than in a register of local land charges, under the Land Charges Act 1925 (repealed: see now the Land Charges Act 1972; the Local Land Charges Act 1975; and PARA 601 ante) or any Act replaced by it, except that: (1) in relation to an assignment of a lease or underlease or a mortgage by an assignee under such an assignment, it does not include any instrument or matter affecting the title to the freehold or to any relevant leasehold reversion; and

(2) in relation to the grant of an underlease or the mortgage by the underlessee of the term of years created by an underlease, it does not include any instrument or matter affecting the title to the freehold or to any leasehold reversion superior to the leasehold interest out of which the term of years is derived: Law of Property Act 1969 s 25(10). 'Instrument' includes any document which is, or but for the Law of Property Act 1969 Pt II (ss 16-22) (as amended) would be, capable of registration under the Yorkshire Registries Act 1884; and references to the registration of an instrument include references to the registration of a memorial of an instrument: Law of Property Act 1969 s 30(1). The Yorkshire Registries Act 1884 has been repealed.

3 Law of Property Act 1969 s 25(1). In the case of a claim to recover compensation, the cause of action is deemed for the purposes of the Limitation Act 1980 to accrue at the time when the registered land charge affecting the estate or interest in question comes to the purchaser's notice: Law of Property Act 1969 s 25(5) (amended by the Limitation Act 1980 s 40(2), Sch 3 para 9). See LIMITATION PERIODS.

4 'Date of completion', in relation to land which vests in the Land Commission or another acquiring authority by virtue of a general vesting declaration under the Land Commission Act 1967 or the Town and Country Planning Act 1968, means the date on which it so vests: Law of Property Act 1969 s 25(10). The Town and Country Planning Act 1968 has been repealed, and the provisions as to general vesting declarations formerly contained in the Town and Country Planning Act 1968 were consolidated in the Compulsory Purchase (Vesting Declarations) Act 1981. As to the making and effect of vesting declarations see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 686 et seq. The Land Commission ceased to exist on 1 May 1971: Land Commission (Dissolution) Act 1971 s 1(2); Land Commission (Dissolution) (Appointed Day) Order 1971, SI 1971/670.

5 Law of Property Act 1969 s 25(1)(a). The Act came into force on 1 January 1970: see s 31(2).

6 Ibid s 25(1)(b). For this purpose, the question whether any person had actual knowledge of a charge is to be determined without regard to the Law of Property Act 1925 s 198 (as amended) (see PARA 616 ante) under which registration under the Land Charges Act 1925 (repealed: see now the Land Charges Act 1972; the Local Land Charges Act 1975; and PARA 601 ante) or any enactment replaced by it is deemed to constitute actual notice: Law of Property Act 1969 s 25(2). For the purposes of s 25 (as amended), any knowledge acquired in the course of a transaction by a person acting as counsel, solicitor or other agent for another is treated as the knowledge of that other: s 25(11).

7 Ibid s 25(1)(c). For these purposes, 'relevant title' means: (1) in relation to a disposition made under contract, the title which the purchaser was, apart from any acceptance by him (by agreement or otherwise) of a shorter or imperfect title, entitled to require; or (2) in relation to any other disposition, the title which he would have been entitled to require if the disposition had been made under a contract to which the Law of Property Act 1925 s 44(1) (as amended) (see SALE OF LAND vol 42 (Reissue) PARA 139) applied and that contract had been made on the date of completion: Law of Property Act 1969 s 25(10). Where a transaction comprised in the relevant title was effected or evidenced by a document which expressly provided that it should take effect subject to an interest or obligation capable of registration in any of the relevant registers, the transaction which created that interest or obligation is treated for the purposes of s 25(1)(c) as comprised in the relevant title: see s 25(3). 'Relevant registers' means the registers kept under Land Charges Act 1925 s 1 (repealed: see now the Land Charges Act 1972 s 1; and PARA 607 ante): Law of Property Act 1969 s 25(10).

8 Ibid s 25(4). As to the meaning of 'registrar' see PARA 602 note 2 ante.

9 Ibid s 25(6). The proceedings are assigned to the Chancery Division: see CPR Sch 1 RSC Ord 93 r 17; and CIVIL PROCEDURE.

10 Law of Property Act 1969 s 25(6).

11 Ie under ibid s 25 (as amended).

12 For the meaning of 'registered land charge' see note 2 supra; definition applied by the Land Charges Rules 1974, SI 1974/1286, r 15(2).

13 As to the registers see PARA 607 ante.

14 As to the meaning of 'index' see PARA 607 note 9 ante.

15 Land Charges Rules 1974, SI 1974/1286, r 15(1).

16 Law of Property Act 1969 s 25(8).



Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/1. SYSTEM OF REGISTRATION/(3) REGISTRATION GENERALLY/(ii) Effect of Registration/618. Overreaching equitable interests protected by registration.

### **618. Overreaching equitable interests protected by registration.**

The registration of any charge<sup>1</sup>, annuity<sup>2</sup> or other interest under the Land Charges Act 1972 does not prevent it from being overreached<sup>3</sup> under any other Act, except where otherwise provided in that other Act<sup>4</sup>. According to their priority, the annuity and charges become charges on the proceeds of sale of the land or take effect as if limited by the settlement, as the case may be<sup>5</sup>. No other equitable interest protected by registration can be protected<sup>6</sup>.

A purchaser<sup>7</sup> of a legal estate only takes subject to certain interests created before 1 January 1926<sup>8</sup> if he has notice<sup>9</sup> of them and they are not overreached as mentioned above<sup>10</sup>. The interests are:

- 11 (1) the benefit of any covenant or agreement restrictive of the user of the land;
- 12 (2) an equitable easement;
- 13 (3) the interest under a puisne mortgage<sup>11</sup>, unless and until it is acquired under a transfer made after 31 December 1925; and
- 14 (4) the benefit of an estate contract, unless and until it is acquired under a conveyance made after 31 December 1925<sup>12</sup>.

1 As to limited owner's charges and general equitable charges see PARAS 630-631 post.

2 For the meaning of 'annuity' see PARA 667 post. As to unregistered annuities and overreached and cancelled annuities see PARAS 669-670 post.

3 As to overreaching see REAL PROPERTY vol 39(2) (Reissue) PARAS 247-249, 252.

4 Land Charges Act 1972 s 13(1). See further the Law of Property Act 1925 s 2(3)(v); and the Settled Land Act 1925 s 72(3). See also REAL PROPERTY vol 39(2) (Reissue) PARA 249.

5 See the Law of Property Act 1925 s 2(2) (as amended); the Settled Land Act 1925 s 72(3); and the Interpretation Act 1978 s 17(2)(a). See also REAL PROPERTY vol 39(2) (Reissue) PARAS 248-249.

6 See the Law of Property Act 1925 s 2(3)(v); the Settled Land Act 1925 s 72(2)(iii)(b); and the Interpretation Act 1978 s 17(2)(a). The following are expressly excepted from the overreaching powers of trustees of land: (1) the benefit of any covenant or agreement restrictive of the user of land (see the Law of Property Act 1925 s 2(3)(ii)); (2) an equitable easement (see s 2(3)(iii)); and (3) an estate contract (see s 2(3)(iv)). Trustees for sale have been replaced by trustees of land; and, with limited exceptions, it is no longer possible to create new settlements under the Settled Land Act 1925: see the Trusts of Land and Appointment of Trustees Act 1996; and REAL PROPERTY vol 39(2) (Reissue) PARA 64 et seq; SETTLEMENTS vol 42 (Reissue) PARA 676. See also SALE OF LAND; TRUSTS vol 48 (2007 Reissue) PARA 601.

7 For the meaning of 'purchaser' see PARA 616 note 16 ante.

8 These interests are not within the provisions of the Land Charges Act 1925: Law of Property Act 1925 s 2(5).

9 'Notice' includes constructive notice: *ibid* s 205(1)(xvii).

10 *Ibid* s 2(5). The text refers to overreaching by virtue of s 2: see s 2(5).

11 The Law of Property Act 1925 refers to a puisne mortgage within the meaning of the Land Charges Act 1925, but this Act has been repealed. A puisne mortgage affecting a legal estate made before the commencement of the Law of Property Act 1925 which is not protected, either by deposit of documents of title relating to the legal estate or by registration as a land charge does not, as against a purchaser in good faith without notice of it, obtain any benefit by reason of the conversion of the mortgage into a legal mortgage but is,

in favour of that purchaser, deemed to remain an equitable interest; but this provision does not apply to mortgages or charges registered or protected under the Land Registration Act 1925, or to mortgages or charges registered in a local deeds register: Law of Property Act 1925 s 39(7), (8), Sch 1 Pt VII para 6, Pt VIII para 5. 'Mortgage' includes any charge or lien on any property for securing money or money's worth; 'legal mortgage' means a mortgage by demise or sub-demise or a charge by way of legal mortgage: see s 205(1)(xvi). As to Class C land charges see PARA 628 post; and MORTGAGE vol 77 (2010) PARAS 260-261.

12 Ibid s 2(5).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/1. SYSTEM OF REGISTRATION/(3) REGISTRATION GENERALLY/(iii) Cancellation and Rectification/619. Application for cancellation.

### **(iii) Cancellation and Rectification**

#### **619. Application for cancellation.**

An application<sup>1</sup> to cancel an entry in the register<sup>2</sup> must be made in the prescribed form<sup>3</sup> and must be accompanied by: (1) sufficient evidence of the applicant's title to apply for cancellation, unless he is the person on whose behalf the registration was made and he is entitled to the benefit of the entry<sup>4</sup>; or (2) such office copies of orders of the court<sup>5</sup> or the Lands Tribunal<sup>6</sup> as justify cancellation<sup>7</sup>.

An application to cancel the registration of a Class F land charge, unless signed by the person on whose behalf the application for registration was made, must be accompanied by: (a) a written release of the rights of occupation to which the charge relates<sup>8</sup>; or (b) evidence required by statute<sup>9</sup>.

Where the registrar is satisfied that an application to cancel the whole or part of an entry in the register has been properly made, he must: (i) if the application relates to the whole of the entry, cancel that entry and remove from the index<sup>10</sup> the reference to it<sup>11</sup>; or (ii) if the application relates to part only of an entry, note on the register the effect of the cancellation and amend the index accordingly<sup>12</sup>. Application may be made for a certificate that an entry in the register has been cancelled<sup>13</sup>.

1 As to the meaning of 'application' see PARA 609 note 10 ante.

2 As to the registers see PARA 607 ante. As to cancellation of entries in local land charges registers see PARA 695 post.

3 For the form prescribed see the Land Charges Rules 1974, SI 1974/1286, rr 10, Sch 2 Form K11. This does not apply in the case of an entry of a Class F land charge: see r 10. As to the form for an application to cancel the registration of a Class F land charge see rr 2(3), 11, Sch 2 Form K13. As to Class F land charges see PARA 638 post.

4 Ibid r 10(i).

5 See the Land Charges Act 1972 s 1(6); and PARA 645 post.

6 As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

7 Land Charges Rules 1974, SI 1974/1286, r 10(ii). However, provided the registrar has first been consulted and is satisfied that the applicant would suffer exceptional hardship or expense by reason of the provisions of r 10, he may allow the application to be made in Form K12 (see Sch 2), supported by sufficient evidence that the land charge or other matter has been discharged or overreached or is of no effect: r 10 proviso. As to the meaning of 'registrar' see PARA 602 note 2 ante. The fee for the cancellation of an entry in any of the registers is £1 per name: Land Charges (Fees) Order 1990, SI 1990/323, r 2; Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 1. As to fees see PARA 612 ante. As to the vacation of registration pursuant to a court order see PARAS 645-646 post.

8 Land Charges Rules 1974, SI 1974/1286, r 11(i).

9 I.e. evidence referred to in the Family Law Act 1996 s 32, Sch 4 para 4(1) and (if the charge was registered, or the registration of the charge was renewed, pursuant to Sch 4 para 4(3)) evidence to satisfy the registrar that the order referred to in the application for registration or renewal has ceased to have effect: Land Charges Rules 1974, SI 1974/1286, r 11(ii); Interpretation Act 1978 s 17(2)(a). See also PARA 638 post.

10 As to the meaning of 'index' see PARA 607 note 9 ante.

11 Land Charges Rules 1974, SI 1974/1286, r 9(i).

12 Ibid r 9(ii). Where an entry in a register relates to an instrument or matter to which the Land Charges Act 1972 s 14 (as amended) (see PARA 605 ante) does not apply, the registrar may cancel that entry: see the Land Charges Rules 1974, SI 1974/1286, r 13(1). See PARA 610 ante.

13 Ibid r 12. For the prescribed form see r 12, Sch 2 Form K20.

## **UPDATE**

### **619 Application for cancellation**

NOTE 3--SI 1974/1286 r 11 amended, Sch 2 Form K13 substituted: SI 2005/1981.

TEXT AND NOTES 6, 7--Reference to the Lands Tribunal is now to the Upper Tribunal: SI 1974/1286 r 10(ii) (amended by SI 2009/1307).

TEXT AND NOTE 8--For 'rights of occupation' read 'home rights': SI 1974/1286 r 11(i) (amended by SI 2005/1981).

NOTE 9--Family Law Act 1996 s 32 substituted, Sch 4 para 4(1), (3) amended: Civil Partnership Act 2004 Sch 9 paras 3, 15. SI 1974/1286 r 11(ii) amended: SI 2005/1981.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/1. SYSTEM OF REGISTRATION/(3) REGISTRATION GENERALLY/(iii) Cancellation and Rectification/620. Rectification and amendment of entries in registers.

## **620. Rectification and amendment of entries in registers.**

Where it appears that an error in an application<sup>1</sup> has led to a corresponding error in a register<sup>2</sup>, application may be made: (1) for cancellation of the original entry<sup>3</sup> and for the registration of a fresh entry<sup>4</sup>; or (2) for rectification of the original entry<sup>5</sup>. Where an application for rectification has been duly made, the registrar<sup>6</sup> must rectify the register so as to indicate the original entry and the amendments and must record on the register the date of rectification<sup>7</sup>. No person who has obtained a certificate of the result of an official search<sup>8</sup> in the index<sup>9</sup> or an office copy of the register, dated in either case before the date of rectification, is, in respect of that search or office copy, affected by the rectification<sup>10</sup>.

1 As to the meaning of 'application' see PARA 609 note 10 ante.

2 As to the registers see PARA 607 ante.

3 Ie in accordance with the Land Charges Rules 1974, SI 1974/1286, rr 10, 11 (see PARA 619 ante): r 14(1)(i).

4 Ie in accordance with ibid r 5 (see PARA 610 ante): r 14(1)(i).

5 Ibid r 14(1)(ii).

6 As to the meaning of 'registrar' see PARA 602 note 2 ante.

7 Land Charges Rules 1974, SI 1974/1286, r 14(2). An application for rectification must be made in the prescribed form, signed by or on behalf of the person on whose behalf the original application for registration was made or, subject to production of sufficient evidence of title, by or on behalf of any successor in title of that person: rr 2(3), 14(3), Sch 2 Form K9. A fee of £1 per name is payable: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 1. As to fees see PARA 612 ante.

8 As to official searches see PARAS 696-704 post.

9 As to the meaning of 'index' see PARA 607 note 9 ante.

10 Land Charges Rules 1974, SI 1974/1286, r 14(4).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/1. SYSTEM OF REGISTRATION/(3) REGISTRATION GENERALLY/(iv) Acknowledgments/621. Acknowledgments by registrar.

#### **(iv) Acknowledgments**

##### **621. Acknowledgments by registrar.**

Every application<sup>1</sup> for registration<sup>2</sup>, or for renewal, cancellation<sup>3</sup> or rectification<sup>4</sup> of registration, and every priority notice<sup>5</sup> must be acknowledged by the registrar<sup>6</sup> in the prescribed form<sup>7</sup>.

1 As to the meaning of 'application' see PARA 609 note 10 ante.

2 As to an application for registration see PARA 610 ante.

3 As to an application for cancellation see PARA 619 ante.

4 As to an application for rectification and amendment of entries in registers see PARA 620 ante.

5 As to priority notices see PARA 614 ante.

6 As to the meaning of 'registrar' see PARA 602 note 2 ante.

7 Land Charges Rules 1974, SI 1974/1286, r 23. For the prescribed form of acknowledgment of an application see r 2(3), Sch 2 Form K22.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/A. THE CLASSES GENERALLY/622. Classes of land charges.

## **2. SUBJECTS OF CENTRAL REGISTRATION**

### **(1) LAND CHARGES**

#### **(i) Classification**

##### **A. THE CLASSES GENERALLY**

###### **622. Classes of land charges.**

If a charge on or obligation affecting land<sup>1</sup> falls into one of the classes described below it may be registered in the register of land charges as a land charge of that class<sup>2</sup>. The classes are:

- 15 (1) Class A, consisting of charges created, pursuant to the application of some person, under statutory powers<sup>3</sup>;
- 16 (2) Class B, consisting of similar charges created otherwise than pursuant to the application of some person<sup>4</sup>;
- 17 (3) Class C, consisting of: (a) puisne mortgages; (b) limited owner's charges; (c) general equitable charges; (d) estate contracts<sup>5</sup>;
- 18 (4) Class D, consisting of: (a) charges for inheritance tax<sup>6</sup>; (b) restrictive covenants; (c) equitable easements<sup>7</sup>;
- 19 (5) Class E, consisting of certain annuities<sup>8</sup>; and
- 20 (6) Class F, consisting of charges affecting any land by virtue of Part IV of the Family Law Act 1996<sup>9</sup>.

1 As to the meaning of 'land' see PARA 607 note 6 ante.

2 Land Charges Act 1972 s 2(1). As to local land charges see PARA 671 et seq post.

3 See PARA 624 post.

4 See PARA 625 post.

5 See PARAS 628-632 post.

6 As to the substitution of inheritance tax for capital transfer tax see PARA 630 note 3 post.

7 See PARAS 633-636 post.

8 See PARA 637 post. For the meaning of 'annuity' see PARA 667 post.

9 See the Family Law Act 1996 Pt IV (ss 30-63) (as amended); and PARA 638 post.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/A. THE CLASSES GENERALLY/623. Contents of the land charges register.

### **623. Contents of the land charges register.**

The register required to be kept under the Land Charges Act 1972<sup>1</sup> contains, in addition to the date on which each entry was registered and the date, if any, on which the registration was renewed<sup>2</sup>:

- 21 (1) the name and address of the person on whose behalf the application for registration is made<sup>3</sup>;
- 22 (2) the date of and parties to the instrument, if any, creating the charge or, where the charge is not created by an instrument, particulars sufficient to identify the charge<sup>4</sup>;
- 23 (3) the class and sub-class, if any, into which the charge falls<sup>5</sup>;
- 24 (4) the name and address of the estate owner<sup>6</sup> whose estate is affected<sup>7</sup>;
- 25 (5) the county<sup>8</sup> and district in which the land charged is situated, together with a short description identifying the land so far as practicable<sup>9</sup>.
- 26 (6) in the case of a Class F land charge, details of any relevant court order<sup>10</sup>; and
- 27 (7) the official reference number of the priority notice<sup>11</sup>, if any, pursuant to which the application for registration is expressed to be made<sup>12</sup>.

1 As to the register see PARA 607 ante.

2 Land Charges Rules 1974, SI 1974/1286, r 3(1).

3 Ibid rr 2(2), 3(1), Sch 1 item 1(i).

4 Ibid Sch 1 item 1(ii).

5 Ibid Sch 1 item 1(iii). As to the classes see the Land Charges Act 1972 s 2 (as amended); and PARA 622 ante.

6 As to the meaning of 'estate owner', and as to the effect of registration in an incorrect version of the estate owner's name, see PARA 609 note 2 ante.

7 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 1(iv).

8 'County' includes Greater London: ibid r 2(2).

9 Ibid Sch 1 item 1(v).

10 Ibid Sch 1 item 1(vi). The order referred to in the text is any court order made under the Family Law Act 1996 s 31(8) (see PARA 638 post): Land Charges Rules 1974, SI 1974/1286, Sch 1 item 1(vi); Interpretation Act 1978 s 17(2)(a).

11 As to priority notices see PARA 614 ante.

12 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 1(vii).

## **UPDATE**

### **623 Contents of the land charges register**



NOTE 10--Reference to the Family Law Act 1996 s 31(8) is now to s 33(5): SI 1974/1286 Sch 1 item 1(vi) (amended by SI 2005/1981).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/B. CLASSES A AND B/624. Charges within Class A.

## **B. CLASSES A AND B**

### **624. Charges within Class A.**

A Class A land charge is:

- 28 (1) a rent or annuity<sup>1</sup> or principal money payable by instalments or otherwise, with or without interest, which is not a charge created by deed but is a charge upon land<sup>2</sup> (other than a rate<sup>3</sup>) created pursuant to the application of some person under the provisions of any Act, for securing to any person either the money spent by him or the costs, charges and expenses incurred by him under an Act, or the money advanced by him for repaying the money spent or the costs, charges and expenses incurred by another person under the authority of an Act<sup>4</sup>; or
- 29 (2) a rent, annuity or principal money payable as mentioned in head (1) above which is not a charge created by deed but is a charge upon land (other than a rate) created pursuant to the application of some person under certain enactments<sup>5</sup>.

The charges referred to in head (2) above are: (a) a charge of an apportioned part of tithe redemption annuity<sup>6</sup>; (b) a charge in respect of improvements to business premises<sup>7</sup>; (c) a charge in respect of a sum paid in commutation of certain obligations to repair banks, watercourses etc<sup>8</sup>; (d) a charge under a scheme for the apportionment or redemption of corn rents or other payments in lieu of tithes<sup>9</sup>; and (e) a charge in respect of sums due to a tenant of an agricultural holding or in favour of the landlord of an agricultural holding in respect of compensation for, or the cost of, certain improvements<sup>10</sup>.

1 For the meaning of 'annuity' see PARA 667 post.

2 As to the meaning of 'land' see PARA 607 note 6 ante.

3 As to rates see generally RATING AND COUNCIL TAX.

4 Land Charges Act 1972 s 2(2)(a).

5 Ibid s 2(2)(b). The enactments referred to in the text are those mentioned in Sch 2 (as amended): see the text and notes 6-10 infra.

6 Ie under the Tithe Annuities Apportionment Act 1921 s 1 (as amended): Land Charges Act 1972 Sch 2 para 1(b).

7 Ie under the Landlord and Tenant Act 1927 s 12, Sch 1 para (7) (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 801): Land Charges Act 1972 Sch 2 para 1(c).

8 Ie under the Land Drainage Act 1991 s 34(2) (as amended) (see WATER AND WATERWAYS vol 101 (2009) PARA 592): Land Charges Act 1972 Sch 2 para 1(d) (amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 21); Interpretation Act 1978 s 17(2)(a).

9 Ie under the Corn Rents Act 1963 s 1(5) (as amended) (see ECCLESIASTICAL LAW vol 14 para 1222): Land Charges Act 1972 Sch 2 para 1(h).

10 Ie under the Agricultural Holdings Act 1986 ss 85, 86 (see AGRICULTURAL LAND vol 1 (2008) PARA 474-477): Land Charges Act 1972 Sch 2 para 1(i) (added by the Agricultural Holdings Act 1986 s 100, Sch 14 para 51). The reference in the Land Charges Act 1972 Sch 2 para 1(i) (as added) to the Agricultural Holdings Act 1986

includes references to any previous similar enactment: Land Charges Act 1972 Sch 2 para 3 (amended by the Agricultural Holdings Act 1986 Sch 14 para 51).

**UPDATE**

**624 Charges within Class A**

NOTE 6--1921 Act repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/B. CLASSES A AND B/625. Charges within Class B.

### **625. Charges within Class B.**

A Class B land charge is a charge on land<sup>1</sup>, not being a local land charge<sup>2</sup>, of the kind described in head (1) of Class A<sup>3</sup>, created otherwise than pursuant to the application of any person<sup>4</sup>. Such a charge or obligation created before 1 January 1926 can be registered as a Class B land charge only if it is acquired under a conveyance<sup>5</sup> made on or after that date<sup>6</sup>.

1 As to the meaning of 'land' see PARA 607 note 6 ante.

2 As to local land charges see PARA 671 et seq post.

3 See PARA 624 head (1) ante.

4 Land Charges Act 1972 s 2(3) (amended by the Local Land Charges Act 1975 s 19(1), Sch 2). Class B land charges were formerly not registrable: see *R v Vice-Registrar of Land Registry Office* (1889) 24 QBD 178, DC. They arise automatically, whereas Class A land charges (see PARA 624 ante) are created on the application of some person.

5 For the meaning of 'conveyance' see PARA 605 note 3 ante.

6 Land Charges Act 1972 s 2(8).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/B. CLASSES A AND B/626. Class A or Class B land charges as legal mortgages.

### **626. Class A or Class B land charges as legal mortgages.**

A Class A land charge<sup>1</sup>, other than a land improvement charge<sup>2</sup> registered after 31 December 1969<sup>3</sup>, and a Class B land charge<sup>4</sup>, when registered, take effect as if they had been created by a deed of charge by way of legal mortgage<sup>5</sup>, but without prejudice to the priority of the charge<sup>6</sup>. If a land improvement charge was registered as a Class A land charge before 1 January 1970, any body corporate which, but for the charge, would have power to advance money on the security of the estate or interest affected by it has that power notwithstanding the charge<sup>7</sup>.

1 As to Class A land charges see PARA 624 ante.

2 'Land improvement charge' means any charge under the Improvement of Land Act 1864 or under any special improvement Act within the meaning of the Improvement of Land Act 1899: Land Charges Act 1972 s 17(1).

3 The commencement date of the Law of Property Act 1969 was 1 January 1970: s 31(2).

4 As to Class B land charges see PARA 625 ante.

5 'Charge by way of legal mortgage' has the same meaning as in the Law of Property Act 1925 s 205(1)(xvi) (see REAL PROPERTY vol 39(2) (Reissue) PARA 45): Land Charges Act 1972 s 17(1). As to the effect of the creation of a charge by way of legal mortgage see the Law of Property Act 1925 s 87 (as amended); and MORTGAGE.

6 Land Charges Act 1972 s 4(1).

7 Ibid s 4(4).

### **UPDATE**

### **626 Class A or Class B land charges as legal mortgages**

NOTE 2--As to the procedure for obtaining land improvement charges see AGRICULTURAL LAND vol 1 (2008) PARAS 624-636.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/B. CLASSES A AND B/627. Purchasers' protection and overreaching.

**627. Purchasers' protection and overreaching.**

Purchasers are protected against unregistered Class A and Class B land charges<sup>1</sup>, and those charges if registered cannot be overreached on a conveyance of the legal estate<sup>2</sup>.

1 See PARAS 642-643 post.

2 As to overreaching see PARA 618 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/C. CLASS C/628. Charges within Class C.

## **C. CLASS C**

### **628. Charges within Class C.**

A Class C land charge is any of the following, not being a local land charge<sup>1</sup>, namely: (1) a puisne mortgage<sup>2</sup>; (2) a limited owner's charge<sup>3</sup>; (3) a general equitable charge<sup>4</sup>; (4) an estate contract<sup>5</sup>.

Limited owner's charges, general equitable charges and estate contracts created before 1 January 1926 can only be registered as Class C land charges if acquired under a conveyance<sup>6</sup> made on or after that date<sup>7</sup>. A puisne mortgage created before 1 January 1926 may be registered as a land charge before any transfer of the mortgage is made<sup>8</sup>.

1 See the Land Charges Act 1972 s 2(4) (amended by the Local Land Charges Act 1975 s 17(1)(b)). As to local land charges see PARA 671 et seq post.

2 Land Charges Act 1972 s 2(4)(i). As to puisne mortgages see PARA 629 post.

3 Ibid s 2(4)(ii). As to a limited owner's charge see PARA 630 post.

4 Ibid s 2(4)(iii). As to general equitable charges see PARA 631 post.

5 Ibid s 2(4)(iv). As to estate contracts see PARA 632 post.

6 For the meaning of 'conveyance' see PARA 605 note 3 ante.

7 Land Charges Act 1972 s 2(8). As to overreaching these charges on a conveyance of the legal estate see PARA 618 ante.

8 Ibid s 3(3). The mortgagee is not bound to register, but if he does not he may be postponed to a subsequent purchaser in good faith without notice of his mortgage: see the Law of Property Act 1925 s 39, Sch 1 Pt VII para 6, Sch 1 Pt VIII para 5; and PARA 618 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/C. CLASS C/629. Puisne mortgage.

### **629. Puisne mortgage.**

A puisne mortgage is a legal mortgage which is not protected by a deposit of documents relating to the legal estate affected<sup>1</sup>. Puisne mortgages rank according to the date of their registration as land charges<sup>2</sup>. The registration as a land charge of a puisne mortgage or charge does not prevent that mortgage or charge being overreached in favour of a prior mortgagee or a person deriving title under him where, by reason of a sale, foreclosure or otherwise, the right of the puisne mortgagee or subsequent chargee to redeem is barred<sup>3</sup>.

1 Land Charges Act 1972 s 2(4)(i). Thus an equitable mortgage by deposit of title deeds is not registrable as a land charge. Normally, a first legal mortgagee has the right to hold the title deeds: see the Law of Property Act 1925 ss 85(1) proviso, 86(1) proviso. His failure to exercise the right may render him liable in equity to be postponed to a subsequent incumbrancer lending money on the faith of the deeds: *Northern Counties of England Fire Insurance Co v Whipp* (1884) 26 ChD 482, CA; *Walker v Linom* [1907] 2 Ch 104. For the meaning of 'legal estate' see PARA 609 note 5 ante. As to mortgages generally see MORTGAGE.

The local deeds registers, which were established in Middlesex under the Middlesex Registry Act 1708 and in the three ridings of Yorkshire under the Yorkshire Registries Act 1884, are now closed for all purposes and a puisne mortgage registered in a local deeds registry is registrable under the Land Charges Act 1972 to the same extent as a puisne mortgage not registered in a local deeds registry: see the Law of Property Act 1969 s 17(1), (5); Land Charges Act 1972 s 18(6). Where before 1 January 1970 a person purported to register under the Land Charges Act 1925 (repealed: see now the Land Charges Act 1972; the Local Land Charges Act 1975; and PARA 601 ante) a mortgage which was incapable of such registration because it was already registered in the deeds register maintained at a Yorkshire deeds registry, the purported registration is treated as valid notwithstanding the prior registration in the deeds register: see the Law of Property Act 1969 ss 17(7), 31(2); and the Land Charges Act 1972 s 18(6).

2 See the Law of Property Act 1925 s 97 (amended by the Law of Property Act 1969 s 17(1), Sch 2 Pt II; the Land Registration and Land Charges Act 1971 s 9(2); the Land Charges Act 1972 s 18(1), (3), Sch 3 para 1, Sch 5; and the Land Registration Act 2002 s 133, Sch 11 para 2(1), (10)). Cf the Land Charges Act 1972 s 4(5) (see PARA 643 post), by which a puisne mortgage is void against a subsequent mortgagee unless the puisne mortgage is registered before the date of the subsequent mortgage.

3 Ibid s 13(2). As to the statutory powers of realising mortgages and as to sale and foreclosure generally see MORTGAGE. As to overreaching see PARA 618 ante.



Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/C. CLASS C/630. Limited owner's charge.

### **630. Limited owner's charge.**

A limited owner's charge is an equitable charge acquired by a tenant for life<sup>1</sup> or statutory owner<sup>2</sup> under the Inheritance Tax Act 1984<sup>3</sup>, or under any other statute, by reason of the discharge by him of any inheritance tax<sup>4</sup> or other liabilities, and to which special priority is given by the statute<sup>5</sup>.

1 'Tenant for life' includes a person, not being a statutory owner (see note 2 *infra*), who has the powers of a tenant for life under the Settled Land Act 1925 (see Pt II (ss 38-72) (as amended); and SETTLEMENTS) and, where the context requires, one of two or more persons who together constitute the tenant for life, or have the powers of a tenant for life: s 117(1)(xxviii); definition applied by the Land Charges Act 1972 s 17(1). As to settlements generally see SETTLEMENTS.

2 'Statutory owner' means the trustees of the settlement or other persons who during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under the Settled Land Act 1925, but does not include the trustees of the settlement where by virtue of a court order or otherwise the trustees have powers to convey the settled land in the name of the tenant for life; 'trustees of the settlement' mean the trustees thereof for the purposes of the Settled Land Act 1925 howsoever appointed or constituted: s 117(1)(xxvi); definition applied by the Land Charges Act 1972 s 17(1). For the meaning of 'settled land' see PARA 605 note 3 *ante*. As to the meaning of 'settlement' see PARA 631 note 3 *post*.

3 *Ie* under the Inheritance Tax Act 1984 s 212(2) (see INHERITANCE TAXATION vol 24 (Reissue) PARA 652): Land Charges Act 1972 s 2(4)(ii) (amended by the Finance Act 1975 s 52(1), Sch 12 paras 2, 18(1), (2); and the Inheritance Tax Act 1984 s 276, Sch 8 para 3(1)(a)). The Land Charges Act 1972 refers to the Capital Transfer Act 1984, but this has been renamed as the Inheritance Tax Act 1984: see the Finance Act 1986 s 100(1); and INHERITANCE TAXATION vol 24 (Reissue) PARA 402.

4 The Land Charges Act 1972 s 2(4) refers to 'capital transfer tax', which, except in relation to a liability to tax arising before 25 July 1986, is now known as inheritance tax: see the Finance Act 1986 s 100(2); and INHERITANCE TAXATION vol 24 (Reissue) PARA 402. As to inheritance tax generally see INHERITANCE TAXATION.

5 Land Charges Act 1972 s 2(4)(ii) (as amended: see note 3 *supra*). See further INHERITANCE TAXATION vol 24 (Reissue) PARA 652. As to overreaching a limited owner's charge see PARA 618 *ante*. As to Inland Revenue charges in respect of inheritance tax see PARA 634 *post*.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/C. CLASS C/631. General equitable charge.

### **631. General equitable charge.**

A general equitable charge is any equitable charge which: (1) is not secured by a deposit of documents relating to the legal estate affected<sup>1</sup>; (2) does not arise, or affect an interest arising, under a trust of land<sup>2</sup> or a settlement<sup>3</sup>; (3) is not a charge given by way of indemnity against rents equitably apportioned or charged exclusively on land<sup>4</sup> in exoneration of other land and against the breach or non-observance of covenants or conditions<sup>5</sup>; and (4) is not included in any other class of land charge<sup>6</sup>.

1 Land Charges Act 1972 s 2(4)(iii)(a). If a general equitable charge is duly registered and is then followed by a legal mortgage (with or without the deeds), the legal mortgagee will have actual notice of it (see the Law of Property Act 1925 s 198(1) (as amended); and PARA 616 text and note 7 ante) and cannot gain priority by virtue of his legal estate. If the general equitable charge is not registered before completion, it will be void against the legal mortgagee: see the Land Charges Act 1972 s 4(5); and PARA 643 post. For the meaning of 'legal estate' see PARA 609 note 5 ante. As to the register see PARA 607 ante. As to overreaching a general equitable charge see PARA 618 ante.

2 'Trust of land' means any trust of property which consists of or includes land: Trusts of Land and Appointment of Trustees Act 1996 s 1(1)(a); definition applied by the Interpretation Act 1978 s 5, Sch 1 (Sch 1 amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 16). This does not include land which (despite the Trusts of Land and Appointment of Trustees Act 1996 s 2 (see note 3 infra)) is settled land or land to which the Universities and College Estates Act 1925 applies: see the Trusts of Land and Appointment of Trustees Act 1996 s 1(3).

3 Land Charges Act 1972 s 2(4)(iii)(b) (amended by the Trusts of Land and Appointment of Trustees 1996 Sch 3 para 12(1), (2)). 'Settlement' includes an instrument or instruments which under the Settled Land Act 1925 (or the Acts which it replaces) is or are deemed to be or which together constitute a settlement, and a settlement which is deemed to have been made by any person or to be subsisting for the purposes of the Act: Settled Land Act 1925 s 117(1)(xxiv); definition applied by the Land Charges Act 1972 s 17(1). With limited exceptions, it is no longer possible to create new settlements under the Settled Land Act 1925: see the Trusts of Land and Appointment of Trustees Act 1996 s 2; and REAL PROPERTY vol 39(2) (Reissue) PARA 64 et seq; SETTLEMENTS vol 42 (Reissue) PARA 676; TRUSTS vol 48 (2007 Reissue) PARA 601.

Any equitable charge that a purchaser of a share of partnership property, who has paid the purchase money, may have is not registrable as a general equitable charge as it affects an interest which arises under a trust (see *Re Rayleigh Weir Stadium* [1954] 2 All ER 283, [1954] 1 WLR 786) and a charge on the deposit and proceeds of sale of land is not a land charge (see *Georgiades v Edward Wolfe & Co Ltd* [1965] Ch 487, [1964] 3 All ER 433, CA). See also *Thomas v Rose* [1968] 3 All ER 765, [1968] 1 WLR 1797 (agreement to divide the proceeds of a sale).

4 As to the meaning of 'land' see PARA 607 note 6 ante.

5 Land Charges Act 1972 s 2(4)(iii)(c).

6 Ibid s 2(4)(iii)(d). An annuity created after 1925 is registrable as a general equitable charge. As to annuities created before 1926 see PARAS 637, 667 post.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/C. CLASS C/632. Estate contract.

### 632. Estate contract.

An estate contract is a contract by an estate owner<sup>1</sup> or by a person entitled at the date of the contract to have a legal estate<sup>2</sup> conveyed to him to convey<sup>3</sup> or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option to purchase<sup>4</sup>, a right of pre-emption<sup>5</sup> or any similar right<sup>6</sup>. A contract under which one person is bound to a second person to dispose of a legal estate to such third person as the second person directs is an estate contract<sup>7</sup>. A notice of a tenant's desire to have the freehold or an extended lease under the Leasehold Reform Act 1967 is registrable as if it were an estate contract<sup>8</sup>. However, no lease is registrable or deemed to be an estate contract by reason of the rights conferred on the tenant to acquire the freehold or an extended lease by that Act<sup>9</sup>.

1 As to the meaning of 'estate owner' see PARA 609 note 2 ante. A contract by a tenant from year to year to grant a lease for ten years if he acquires the fee simple is an estate contract: *Sharp v Coates* [1949] 1 KB 285, [1948] 2 All ER 871, CA (decided under the Land Charges Act 1925 s 10(1), Class C (iv) (repealed)).

2 A contract to purchase a share of partnership property is not registrable as an estate contract as it is not a contract to convey a legal estate: see *Re Rayleigh Weir Stadium* [1954] 2 All ER 283, [1954] 1 WLR 786; and PARA 631 note 3 ante. For the meaning of 'legal estate' see PARA 609 note 5 ante.

3 As to the meaning of 'convey' see PARA 605 note 3 ante.

4 Therefore, an option to renew a lease is registrable as an estate contract: see *Beesly v Hallwood Estates Ltd* [1960] 2 All ER 314, [1960] 1 WLR 549 (affd on another point [1961] Ch 105, [1961] 1 All ER 90, CA); *Phillips v Mobil Oil Co Ltd* [1989] 3 All ER 97, [1989] 1 WLR 888, CA. 'Purchase' has a meaning corresponding to that of 'purchaser' (see PARA 616 note 16 ante): Land Charges Act 1972 s 17(1).

5 Although a right of pre-emption may be registered as a land charge, it does not create an interest in land until the right becomes exercisable, at which point it is converted into an option: *Pritchard v Briggs* [1980] Ch 338, [1980] 1 All ER 294, CA, (where it was held that an option to purchase had priority over an earlier right of pre-emption which had been registered as an estate contract but which had not become exercisable). A condition imposed by the Housing Act 1985 s 33(2)(b), (3) (see HOUSING vol 22 (2006 Reissue) PARA 306) on a disposal of land pursuant to s 32 (as amended) is a right of pre-emption and therefore registrable as a land charge: see *First National Securities Ltd v Chiltern District Council* [1975] 2 All ER 766, [1975] 1 WLR 1075 (decided under the Housing Act 1957 s 104(3) (repealed)). Rights of pre-emption are capable of release: see the Law of Property Act 1925 s 186; and REAL PROPERTY.

6 Land Charges Act 1972 s 2(4)(iv). A notice to treat served by an acquiring authority on compulsory acquisition of land is not an estate contract (*Capital Investments Ltd v Wednesfield UDC* [1965] Ch 774, [1964] 1 All ER 655; cf *ER Ives Investment Ltd v High* [1967] 2 QB 379, [1967] 1 All ER 504, CA), nor is an equitable right of re-entry (*Shiloh Spinners Ltd v Harding* [1973] AC 691, [1973] 1 All ER 90, HL). A proviso in a lease requiring the tenant to offer to surrender the lease before requesting the landlords' consent to an assignment is an estate contract: see *Greene v Church Comrs for England* [1974] Ch 467, [1974] 3 All ER 609, CA. There is judicial support for the view that a conditional contract relating to land is registrable as an estate contract if the condition is one that is to be satisfied by some extraneous person or event rather than by the parties, but the question of whether other conditional contracts are registrable has been left open: see *Haslemere Estates Ltd v Baker* [1982] 3 All ER 525 at 534, [1982] 1 WLR 1109 at 1118 per Sir Robert Megarry VC. Where an option to purchase which is registered as an estate contract is exercised, no further registration is required in respect of the resulting contract of sale as it is protected by the existing registration: *Armstrong & Holmes Ltd v Holmes* [1994] 1 All ER 826, [1993] 1 WLR 1482. As to priorities where there are competing charges see *Williams v Burlington Investments Ltd* (1977) 121 Sol Jo 424, HL.

7 *Turley v Mackay* [1944] Ch 37, [1943] 2 All ER 1; cf *Thomas v Rose* [1968] 3 All ER 765, [1968] 1 WLR 1797.

8 See the Leasehold Reform Act 1967 s 5(5) (amended by the Land Registration Act 2002 s 133, Sch 11 para 8(1), (2)); and the Interpretation Act 1978 s 17(2)(a).

9 See the Leasehold Reform Act 1967 s 5(5) (as amended: see note 8 supra); the Interpretation Act 1978 s 17(2)(a); and the Land Charges Act 1972 s 18(6).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/D. CLASSES D AND E/633. Charges within Class D.

## ***D. CLASSES D AND E***

### **633. Charges within Class D.**

A Class D land charge is any of the following, not being a local land charge<sup>1</sup> namely: (1) an Inland Revenue charge<sup>2</sup>; (2) a restrictive covenant<sup>3</sup>; and (3) an equitable easement<sup>4</sup>.

1 See the Land Charges Act 1972 s 2(5) (amended by the Local Land Charges Act 1975 s 17(1)(b)). As to local land charges see PARA 671 et seq post.

2 Land Charges Act 1972 s 2(5)(i). As to Inland Revenue charges see PARA 634 post.

3 Ibid s 2(5)(ii). As to restrictive covenants see PARA 635 post. As to the nature of restrictive covenants see also PARA 603 text and notes 2-3 ante.

4 Ibid s 2(5)(iii). As to equitable easements see PARA 636 post.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/D. CLASSES D AND E/634. Inland Revenue charge.

### **634. Inland Revenue charge.**

An Inland Revenue charge is a charge on land<sup>1</sup> acquired by the Commissioners of Inland Revenue<sup>2</sup> under the Inheritance Tax Act 1984<sup>3</sup>.

The application to register<sup>4</sup> an Inland Revenue charge must state the tax in respect of which the charge is claimed and, so far as possible, must define the land affected, and those particulars must be entered or referred to in the register<sup>5</sup>.

An Inland Revenue charge created or entered into on or after 1 January 1926 is void as against a purchaser<sup>6</sup> for money or money's worth of a legal estate<sup>7</sup> in the land charged with it, unless the land charge is registered in the register of land charges before the completion of the purchase<sup>8</sup>.

Where unregistered land in England and Wales<sup>9</sup> subject to an Inland Revenue charge<sup>10</sup>, or an interest in that land<sup>11</sup>, is disposed of to a purchaser and, at the time of the disposition<sup>12</sup>, the charge is not registered as a land charge, the land or interest ceases to be subject to the charge but the property<sup>13</sup> for the time being representing it becomes subject to the charge<sup>14</sup>. Where property subject to an Inland Revenue charge, or an interest in such property, is disposed of to a purchaser in circumstances where it does not then cease to be subject to the charge<sup>15</sup>, it ceases to be subject to it after six years<sup>16</sup>.

1 As to the meaning of 'land' see PARA 607 note 6 ante.

2 The Commissioners of Inland Revenue are referred to in the Land Charges Act 1972 as 'the Board': see s 17(1). As to the Commissioners of Inland Revenue see INCOME TAXATION vol 23(1) (Reissue) PARA 31 et seq.

3 Ibid s 2(5)(i) (amended by the Inheritance Tax Act 1984 s 276, Sch 8 para 3(1)(b)). As to the Inheritance Tax Act 1984 see PARA 630 note 3 ante; and INHERITANCE TAXATION.

4 As to the register see PARA 607 ante.

5 Land Charges Act 1972 s 3(6) (amended by the Finance Act 1975 s 52(1), Sch 12 paras 2, 18(1), (4)). As to the contents of the register see PARA 623 ante.

6 I.e a purchaser within the meaning of the Inheritance Act 1984: see the Land Charges Act 1972 s 4(6) (amended by the Finance Act 1975 Sch 12 paras 2, 18(1), (5); and the Inheritance Tax Act 1984 s 276, Sch 8 para 3(2)). For these purposes, 'purchaser' means a purchaser in good faith for consideration in money or money's worth other than a nominal consideration and includes a lessee, mortgagee or other person who for such consideration acquires an interest in the property in question; and 'property' includes rights and interests of any description: Inheritance Tax Act 1984 s 272. See also INHERITANCE TAXATION vol 24 (Reissue) PARA 514.

7 For the meaning of 'legal estate' see PARA 609 note 5 ante.

8 Land Charges Act 1972 s 4(6) (as amended: see note 6 supra).

9 'England' means, subject to any alteration of the boundaries of local government areas, the area consisting of the counties established by the Local Government Act 1972 s 1 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 24), and Greater London and the Isles of Scilly: Interpretation Act 1978 s 5, Sch 1. 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as originally enacted) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (as amended) (consequential alteration of boundary following alteration of watercourse) (see LOCAL GOVERNMENT vol 69 (2009) PARA 90): Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 9). As to local government areas see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; and as to boundary changes see LOCAL GOVERNMENT vol 69 (2009) PARA 56 et seq. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

10 For the meaning of an 'Inland Revenue charge' see the Inheritance Tax Act 1984 s 272; and INHERITANCE TAXATION vol 24 (Reissue) PARA 683.

11 For the meaning of 'land' see ibid s 272; and INHERITANCE TAXATION vol 24 (Reissue) PARA 522.

12 'The time of disposition' means the time of completion: ibid s 238(3)(b). For the meaning of 'disposition' see s 272; and INHERITANCE TAXATION vol 24 (Reissue) PARA 409.

13 For the meaning of 'property' see ibid s 272; and INHERITANCE TAXATION vol 24 (Reissue) PARA 410.

14 See ibid s 238(1)(a); and INHERITANCE TAXATION vol 24 (Reissue) PARA 686.

15 Where an Inland Revenue land charge is registered on property subsequently disposed of to a purchaser, once a certificate of discharge has been given by the Commissioners of Inland Revenue under ibid s 239 (as amended) (see INHERITANCE TAXATION vol 24 (Reissue) PARAS 687-689) and the purchaser has no notice of any fact invalidating the certificate, the property or interest ceases to be subject to the charge but the property for the time being representing it remains subject to the charge: see s 238(1)(d); and INHERITANCE TAXATION vol 24 (Reissue) PARA 686.

16 Ibid s 238(2). The period of six years begins with the later of: (1) the date on which the tax became due; and (2) the date on which a full and proper account of the property was first delivered to the Commissioners of Inland Revenue in connection with the relevant transfer concerned: s 238(2)(a), (b). For the meaning of 'tax' for these purposes see INHERITANCE TAXATION vol 24 (Reissue) PARA 420.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/D. CLASSES D AND E/635. Restrictive covenant.

### **635. Restrictive covenant.**

A restrictive covenant is a covenant or agreement, not being a covenant or agreement between a lessor and a lessee, restrictive of the user of land<sup>1</sup> entered into on or after 1 January 1926<sup>2</sup>.

A covenant entered into in a lease for the benefit of the demised land is not registrable, being a covenant between a lessor and a lessee, even if it affects land other than that demised<sup>3</sup>.

1 As to the meaning of 'land' see PARA 607 note 6 ante.

2 Land Charges Act 1972 s 2(5)(ii). As to the nature of restrictive covenants see PARA 603 text and notes 2-3 ante. As to the registration and enforcement of covenants under the Leasehold Reform Act 1967 see ss 29, 30, Sch 4 Pt I (all as amended); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1456. As to estate contracts see PARA 632 ante.

3 *Dartstone Ltd v Cleveland Petroleum Co Ltd* [1969] 3 All ER 668, [1969] 1 WLR 1807.



Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/D. CLASSES D AND E/636. Equitable easement.

### **636. Equitable easement.**

An equitable easement is an easement, right or privilege<sup>1</sup> over or affecting land<sup>2</sup> created or arising on or after 1 January 1926, and being merely an equitable interest<sup>3</sup>.

1 'Right or privilege' must be construed in a restricted sense ejusdem generis with 'easement': *Lewisham Borough Council v Maloney* [1948] 1 KB 50, [1947] 2 All ER 36, CA; and see note 3 infra. As to easements generally see EASEMENTS AND PROFITS A PRENDRE.

2 As to the meaning of 'land' see PARA 607 note 6 ante.

3 Land Charges Act 1972 s 2(5)(iii). See PARA 618 ante. A 'legal easement' is an easement which is held for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute: Law of Property Act 1925 s 1(2)(a). An easement which does not fall within this definition is an equitable interest: s 1(3). 'Equitable easement' must be construed narrowly and does not include a mere equitable right of re-entry (see *Shiloh Spinners Ltd v Harding* [1973] AC 691, [1973] 1 All ER 90, HL), nor rights arising in equity by reason of a mere licence or estoppel (see *ER Ives Investment Ltd v High* [1967] 2 QB 379, [1967] 1 All ER 504, CA), nor a right of entry to remove fixtures at the end of a lease (see *Poster v Slough Estates Ltd* [1969] 1 Ch 495, [1968] 3 All ER 257).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/D. CLASSES D AND E/637. Class E land charge.

**637. Class E land charge.**

A Class E land charge is an annuity<sup>1</sup> created before 1 January 1926 and not registered in the register of annuities<sup>2</sup>.

<sup>1</sup> For the meaning of 'annuity' see PARA 667 post.

<sup>2</sup> Land Charges Act 1972 s 2(6). As to the register of annuities see PARA 668 post. As to the registration of annuities created after 1925 as general equitable charges see PARA 631 note 6 ante. As to overreaching an annuity see PARA 618 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(i) Classification/E. CLASS F/638. Class F land charge.

## ***E. CLASS F***

### **638. Class F land charge.**

A Class F land charge is a charge affecting any land<sup>1</sup> by virtue of Part IV of the Family Law Act 1996<sup>2</sup>.

If, at any time during a marriage, one spouse is entitled to occupy a dwelling-house<sup>3</sup> by virtue of a beneficial estate or interest<sup>4</sup>, the other spouse's matrimonial home rights<sup>5</sup> are a charge on that estate or interest<sup>6</sup>, having the same priority as if it were an equitable interest created on the latest of the following dates: (1) the date when the spouse so entitled acquired the estate or interest; (2) the date of the marriage; or (3) 1 January 1968<sup>7</sup>.

If, at any time when a spouse's matrimonial home rights are a charge on an interest of the other spouse under a trust, there are, apart from either of the spouses, no persons, living or unborn, who are or could become beneficiaries under the trust<sup>8</sup>, the rights are a charge also on the estate or interest of the trustees for the other spouse<sup>9</sup>. The charge has the same priority as if it were an equitable interest created (under powers overriding the trusts) on the date when it arises<sup>10</sup>. The spouse's matrimonial home rights are brought to an end by the death of the other spouse, or the termination (otherwise than by death) of the marriage, unless the court directs otherwise by an order made during the marriage<sup>11</sup>. A charge in respect of matrimonial home rights<sup>12</sup> is not registrable<sup>13</sup> unless it is a charge on a legal estate<sup>14</sup>.

If a spouse's matrimonial home rights are a charge on the estate of the other spouse or of trustees of the other spouse, and that estate is the subject of a mortgage, then if, after the date of the creation of the mortgage ('the first mortgage'), the charge is registered<sup>15</sup>, the charge is deemed to be a mortgage subsequent in date to the first mortgage for the purposes of the statutory provisions<sup>16</sup> which regulate the rights of mortgagees to make further advances ranking in priority to subsequent mortgages<sup>17</sup>.

Where a spouse's matrimonial home rights are a charge on the estate or interest in the dwelling-house and the charge is registered<sup>18</sup>, the registrar must cancel the registration of a Class F land charge if he is satisfied: (a) by the production of a certificate or other sufficient evidence, that either spouse is dead<sup>19</sup>; (b) by the production of an official copy of a court decree or order of a court, that the marriage in question has been terminated otherwise than by death<sup>20</sup>; or (c) by the production of a court order, that the spouse's matrimonial home rights constituting the charge have been terminated by the order<sup>21</sup>. Where the registration has been renewed or the charge was registered pursuant to a court order<sup>22</sup>, the registrar must not cancel the registration of the charge unless he is also satisfied that the order has ceased to have effect<sup>23</sup>.

A spouse entitled to matrimonial home rights may by a release in writing release those rights or release them as respects part only of the dwelling-house affected by them<sup>24</sup>. Where one spouse is entitled<sup>25</sup> to a charge on an estate in a dwelling-house and the charge is registered<sup>26</sup>, it will be a term of any contract for the sale of that estate, whereby the vendor agrees to give vacant possession of the dwelling-house on completion of the contract, that the vendor will before such completion procure the cancellation of the registration of the charge at his own expense<sup>27</sup>.

A spouse entitled<sup>28</sup> to a registrable charge in respect of each of two or more dwelling-houses may only register<sup>29</sup> one of the charges to which that spouse is entitled at any one time<sup>30</sup>. If any

of those charges is registered, the registrar, on being satisfied that any other of them is so registered, must cancel the registration of the charge first registered<sup>31</sup>. A spouse entitled to a charge<sup>32</sup> on an estate or interest may agree in writing that any other charge on, or interest in, that estate or interest ranks in priority to the charge to which that spouse is so entitled<sup>33</sup>.

1 As to the meaning of 'land' see PARA 607 note 6 ante.

2 Land Charges Act 1972 s 2(7) (amended by the Family Law Act 1996 s 66(1), Sch 8 Pt III para 47). As to the Family Law Act 1996 Pt IV (ss 30-63) (as amended) see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 285 et seq. As to the position of a purchaser in relation to an unregistered Class F land charge see PARA 644 post.

If a mortgagee of unregistered land which consists, or substantially consists, of a dwelling-house brings a claim for the enforcement of the security, and there is a Class F land charge registered against the person who is the estate owner at the relevant time or any person who, where the estate owner is a trustee, preceded him as trustee during the subsistence of the mortgage, the mortgagee must serve notice of the claim on the person on whose behalf the land charge is registered if that person is not a party to the claim: s 56(1)(a), (2)(a). 'Dwelling-house' includes:

1 (1) any building or part of a building which is occupied as a dwelling; and

2 (2) any caravan, house boat or structure which is occupied as a dwelling,

and any yard, garden, garage or outhouse belonging to it and occupied with it: s 63(1). As to the meaning of 'estate owner' see PARA 609 note 2 ante. As to the meaning of 'mortgage' see PARA 618 note 11 ante. As to the meaning of 'mortgagee' see PARA 616 note 7 ante. If an official search has been made on behalf of the mortgagee which would disclose any Class F land charge, a certificate of search has been issued and the claim is commenced in the priority period, the relevant time is the date of the certificate: s 56(3). The relevant time in any other case is the time when the claim is commenced: s 56(4). 'Priority period' means the period for which, in accordance with the Land Charges Act 1972 s 11(5), (6) (see PARAS 614 ante, 701 post) a certificate on an official search operates in favour of a purchaser: Family Law Act 1996 s 56(5). As to searches generally see PARA 696 et seq post.

3 For these purposes, 'dwelling-house' includes any building or part of a building which is occupied as a dwelling and any yard, garden, garage or outhouse belonging to it and occupied with it: *ibid* s 63(1), (4). This definition applies for the purposes of ss 31, 32, 53, 54: s 63(4).

4 *Ibid* s 31(1). In determining for the purposes of Pt IV (as amended) whether a person is entitled to occupy a dwelling-house by virtue of an estate or interest, any right to possession of the dwelling-house conferred on the mortgagee of the dwelling-house under or by virtue of the mortgage is to be disregarded: s 54(1). Section 54(1) applies whether or not the mortgagee is in possession: s 54(2). For the meaning of 'dwelling-house' for these purposes see note 3 *supra*. As to mortgages in possession see MORTGAGE.

5 'Matrimonial home rights' are: (1) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by the other spouse except with the leave of the court given by order under *ibid* s 33; and (2) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling-house: s 30(2). For the meaning of 'dwelling-house' for these purposes see note 2 *supra*. For the purposes of Pt IV (as amended), 'court' means the High Court, a county court or a magistrates' court: s 57(1). This definition is subject to the provision made by or under ss 57-59 and to any express provision as to the jurisdiction of any court made by any other provision of Pt IV (as amended): s 57(2). The Lord Chancellor may by order provide that in specified circumstances the whole, or any part of any specified proceedings under Pt IV (as amended) is to be transferred to (a) a specified court; (b) a court which falls within a specified class of court; or (c) a particular court determined in accordance with, or specified in, the order: see s 57(5); and the Family Law Act 1996 (Part IV) (Allocation of Proceedings) Order 1997, SI 1997/1896. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 Family Law Act 1996 s 31(2). A Class F land charge is registrable notwithstanding that the spouse on whose behalf the registration is made is not in actual occupation of the property: see *Watts v Waller* [1973] QB 153, [1972] 3 All ER 257, CA (decided under the Matrimonial Homes Act 1967 s 2 (repealed)). However, the registration of a Class F land charge is intended only for the protection of the right of occupation and a spouse who does not intend to occupy the property, but seeks to freeze the other spouse's assets, is not entitled to register a charge: see *Barnett v Hassett* [1982] 1 All ER 80, [1981] 1 WLR 1385. For the effect on the charge of the surrender by merger of the estate see the Family Law Act 1996 s 31(9); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 286. As to applications for registration of Class F land charges see PARA 610 ante.

7 *Ibid* s 31(3). The date referred to in the text is the commencement date of the Matrimonial Homes Act 1967 (now repealed).

8 Family Law Act 1996 s 31(4). In determining whether there are any persons who are not, but could become, beneficiaries under the trust, there is to be disregarded any potential exercise of a general power of appointment exercisable by either or both of the spouses alone (whether or not the exercise of it requires the consent of another person): s 31(7).

9 Ibid s 31(5).

10 Ibid s 31(6).

11 Ibid s 31(8). For the court's power to make an order for a spouse's matrimonial home rights to continue notwithstanding the termination of the marriage see s 33(5). Where the court makes such an order, the spouse entitled to the charge affected by the order may: (1) if before the date of the order the charge was registered under the Land Charges Act 1972 s 2 (as amended), renew the registration of the charge; and (2) if before the date of the order the charge was not so registered, register the charge under s 2 (as amended): Family Law Act 1996 Sch 4 para 4(3). Renewal of the registration of the charge (in pursuance of heads (1) and (2) supra) must be effected in such a manner as may be prescribed, and an application for renewal or for registration of a charge must contain such particulars of any order affecting the charge made under s 33(5) as may be prescribed: Sch 4 para 4(4). The renewal (in pursuance of heads (1) and (2) supra) of the registration of a charge does not affect the priority of the charge: Sch 4 para 4(5). For the purposes of Sch 4 para 4, 'prescribed' means prescribed by rules made under, inter alia, the Land Charges Act 1972 s 16 (as amended) (ie the Land Charges Rules 1974, SI 1974/1286 (as amended), taking effect as if made under the Family Law Act 1996 s 32, Sch 4 para 4(4), (6) (as amended), by virtue of the Interpretation Act 1978 s 17(2)(b)) or by land registration rules made under the Land Registration Act 2002, as the circumstances of the case require: Family Law Act 1996 Sch 4 para 4(6) (amended by the Land Registration Act 2002 s 133, Sch 11 para 34(1), (3)). For the form of application for renewal of a registration under the Land Charges Act 1972 s 2 (as amended) see the Land Charges Rules 1974, SI 1974/1286, rr 2(3), 5, Sch 2 Form K8. As to applications for registration under the Land Charges Act 1972 s 2 (as amended) and the registration fee see PARA 610 ante. As to fees generally see PARA 612 ante. As to registration of notice of matrimonial home rights see LAND REGISTRATION vol 26 (2004 Reissue) PARA 999.

12 Ie a charge under the Family Law Act 1996 s 31(2) or s 31(5): see s 31(13).

13 Ie under the Land Charges Act 1972 s 2 (as amended) (see PARA 622 ante): see the Family Law Act 1996 s 31(13).

14 Ibid s 31(13).

15 Ie as a Class F land charge under the Land Charges Act 1972 s 2 (as amended): see the Family Law Act 1996 s 31(12).

16 Ie for the purposes of the Law of Property Act 1925 s 94 (as amended) (see MORTGAGE vol 77 (2010) PARAS 264-265): see the Family Law Act 1996 s 31(12).

17 Ibid s 31(12).

18 Ie under the Land Charges Act 1972 s 2 (as amended): see the Family Law Act 1996 Sch 4 para 4(1).

19 Ibid Sch 4 para 4(1)(a).

20 Ibid Sch 4 para 4(1)(b).

21 Ibid Sch 4 para 4(1)(c).

22 Ie under ibid s 33(5) (see note 11 supra): see Sch 4 para 4(2).

23 Ibid Sch 4 para 4(2).

24 Ibid Sch 4 para 5(1). As to applications for the cancellation of the registration of a Class F land charge following a release see the Land Charges Rules 1974, SI 1974/1286, rr 9, 11(i); and PARA 619 ante. Where a contract is made for the sale of an estate or an interest in a dwelling-house, or for the grant of a lease or underlease of a dwelling-house, being (in either case) a dwelling-house affected by a charge registered under the Land Charges Act 1972 s 2 (as amended), then, without prejudice to the Family Law Act 1996 Sch 4 para 5(1), the matrimonial home rights constituting the charge are deemed to have been released on the happening of whichever of the following events first occurs: (1) the delivery to the purchaser or lessee, as the case may be, or his solicitor on the completion of the contract of an application by the spouse entitled to the charge for the cancellation of the registration of the charge; or (2) the lodging of such an application at Her Majesty's Land Registry: Sch 4 para 5(2). For the meaning of 'dwelling-house' for these purposes see note 3 supra. For these

purposes, any reference to a person's solicitor includes a reference to a licensed conveyancer or a recognised body acting for that person: Sch 4 para 1(1)(b). 'Licensed conveyancer' has the same meaning as in the Administration of Justice Act 1985 s 11(2) (see LEGAL PROFESSIONS vol 66 (2009) PARA 1319); Family Law Act 1996 Sch 4 para 1(2). 'Recognised body' means a body corporate for the time being recognised under the Administration of Justice Act 1985 s 9 (as amended) (incorporated practices: see LEGAL PROFESSIONS vol 65 (2008) PARA 687) or s 32 (provision of conveyancing by recognised bodies: see LEGAL PROFESSIONS vol 66 (2009) PARA 1392); Family Law Act 1996 Sch 4 para 1(2).

25     Ie under *ibid* s 31: see Sch 4 para 3(1).

26     Ie under the Land Charges Act 1972 s 2 (as amended): see the Family Law Act 1996 Sch 4 para 3(1).

27     *Ibid* Sch 4 para 3(1). If, on the completion of such a contract there is delivered to the purchaser or his solicitor an application by the spouse entitled to the charge for the cancellation of the registration of that charge, the term of the contract for which Sch 4 para 3(1) provides is deemed to have been performed: Sch 4 para 3(3). Schedule 4 para 3(1) does not apply to any such contract made by a vendor who is entitled to sell the estate in the dwelling-house freed from any such charge: Sch 4 para 3(2). Schedule 4 para 3(1) applies:

- 3       (1)     only if and so far as a contrary intention is not expressed in the contract (Sch 4 para 3(4));
- 4       (2)     to a contract for exchange as it applies to a contract for sale (Sch 4 para 3(5)); and
- 5       (3)     with necessary modifications, to a contract for the grant of a lease or an underlease of a dwelling-house as it applies to a contract for sale of an estate in a dwelling-house (Sch 4 para 3(6)).

For the meaning of 'dwelling-house' for these purposes see note 3 *supra*.

28     Ie under *ibid* s 31: see Sch 4 para 2.

29     Ie under the Land Charges Act 1972 s 2 (as amended): see the Family Law Act 1996 Sch 4 para 2.

30     See *ibid* Sch 4 para 2.

31     *Ibid* Sch 4 para 2.

32     Ie under *ibid* s 31: see Sch 4 para 6.

33     *Ibid* Sch 4 para 6.

## **UPDATE**

### **638 Class F land charge**

TEXT AND NOTES--These provisions now apply to civil partners; references to matrimonial home rights are now to home rights: Family Law Act 1996 ss 31, 32, Sch 4 (s 31, Sch 4 amended, s 32 substituted by the Civil Partnership Act 2004 Sch 9 paras 2, 3, 15).

NOTE 1--SI 1997/1896 replaced by Allocation and Transfer of Proceedings Order 2008, SI 2008/2836: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 211A.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(ii) Effecting Registration/639. Registration in estate owner's name.

## **(ii) Effecting Registration**

### **639. Registration in estate owner's name.**

A land charge is registered in the name of the estate owner<sup>1</sup> whose estate is intended to be affected<sup>2</sup>. Where a person has died and a land charge created before his death would apart from his death have been registered in his name, it is to be so registered notwithstanding his death<sup>3</sup>.

A charge registered before 1 January 1926<sup>4</sup> in the name of a person other than the estate owner may remain so registered until it is registered in the estate owner's name in the prescribed manner<sup>5</sup>.

1 As to the meaning of 'estate owner', and as to the effect of registration in an incorrect version of the estate owner's name, see PARA 609 note 2 ante.

2 Land Charges Act 1972 s 3(1).

3 Ibid s 3(1A) (added by the Law of Property (Miscellaneous Provisions) Act 1994 s 15(1), (2), (5)). The Land Charges Act 1972 s 3(1A) (as added) does not apply where the application for registration was made before 1 July 1995, but without prejudice to a person's right to make a new application on or after that date. As to completion of the relevant application form in such a case see the Land Charges Rules 1974, SI 1974/1286, r 19A (as added); and PARA 609 ante.

4 I.e. under any provision replaced by the Land Charges Act 1925 (repealed: see now the Land Charges Act 1972; the Local Land Charges Act 1975; and PARA 601 ante); see the Land Charges Act 1972 s 3(2).

5 Ibid s 3(2). For the meaning of 'prescribed' see PARA 607 note 3 ante. As to puisne mortgages created before 1926 see s 3(3); and PARA 628 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(ii) Effecting Registration/640. Applications for registration of a land charge.

#### **640. Applications for registration of a land charge.**

An application for registration of a land charge must be in the prescribed form<sup>1</sup>. If a land charge is not created by an instrument<sup>2</sup>, short particulars of the effect of the charge must be furnished with the application to register the charge<sup>3</sup>.

1 See the Land Charges Act 1972 s 1(2); and PARA 610 ante. For the form for any charge, other than Class F, see the Land Charges Rules 1974, SI 1974/1286, rr 2(3), 5, Sch 2 Form K1. The fee is £1 per name: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 1. As to fees generally see PARA 612 ante. As to contents of the register see PARA 623 ante. For the form for an application for registration of a Class F land charge see the Land Charges Rules 1974, SI 1974/1286, Sch 2 Form K2. As to Class F charges generally see PARA 638 ante. As to acknowledgment of applications see PARA 621 ante.

2 'Instrument' is not defined in the Land Charges Act 1972. As to the meaning of 'instrument' in the Law of Property Act 1925 s 205(1)(viii) see PARA 616 note 1 ante.

3 Land Charges Act 1972 s 3(5). See also *Universal Permanent Building Society v Cooke* [1952] Ch 95 at 104, [1951] 2 All ER 893 at 898, CA, per Jenkins LJ; cf the Law of Property (Miscellaneous Provisions) Act 1989 s 2 (as amended) (see REAL PROPERTY vol 39(2) (Reissue) PARAS 194, 240).



Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(ii) Effecting Registration/641. Expenses of registering a land charge.

**641. Expenses of registering a land charge.**

The expenses incurred by the person entitled to the charge in registering a land charge of Class A<sup>1</sup>, Class B<sup>2</sup> or Class C<sup>3</sup> (other than an estate contract<sup>4</sup>) or by the Commissioners of Inland Revenue<sup>5</sup> in registering an Inland Revenue charge<sup>6</sup> are deemed to form part of the charge, and are recoverable accordingly on the day for payment of any part of the charge next after those expenses are incurred<sup>7</sup>.

1 As to charges within Class A see PARA 624 ante.

2 As to charges within Class B see PARA 625 ante.

3 As to charges within Class C see PARA 628 ante.

4 As to estate contracts see PARA 632 ante.

5 See PARA 634 note 2 ante.

6 As to Inland Revenue charges see PARA 634 ante.

7 Land Charges Act 1972 s 3(4).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(iii) Position of Purchaser on Omission to Register/642. Unregistered Class A land charges.

### **(iii) Position of Purchaser on Omission to Register**

#### **642. Unregistered Class A land charges.**

A Class A<sup>1</sup> land charge created after 31 December 1888 is void as against a purchaser<sup>2</sup> of the land<sup>3</sup> charged with it or any interest in that land, unless the charge is registered in the register of land charges<sup>4</sup> before the completion of the purchase<sup>5</sup>. Similarly, after the expiration of one year from the first conveyance<sup>6</sup> occurring on or after 1 January 1889 of a Class A land charge created before that date, the person entitled to that charge is unable to recover it or any part of it as against a purchaser of the land charged with it or of any interest in the land, unless the charge is registered in the register of land charges before the completion of the purchase<sup>7</sup>.

1 As to charges within Class A see PARA 624 ante.

2 For the meaning of 'purchaser' see PARA 616 note 16 ante.

3 As to the meaning of 'land' see PARA 607 note 6 ante.

4 As to the register see PARA 607 ante.

5 Land Charges Act 1972 s 4(2). For the meaning of 'purchase' see PARA 632 note 4 ante. As to notice see PARA 616 ante.

6 For the meaning of 'conveyance' see PARA 605 note 3 ante.

7 Land Charges Act 1972 s 4(3).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(iii) Position of Purchaser on Omission to Register/643. Unregistered land charges of Classes B, C and D.

### **643. Unregistered land charges of Classes B, C and D.**

A Class B<sup>1</sup> land charge and a Class C<sup>2</sup> land charge (other than an estate contract<sup>3</sup>) created or arising on or after 1 January 1926 is void as against a purchaser<sup>4</sup> of the land<sup>5</sup> charged with it, or of any interest in that land, unless it is registered in the appropriate register before the completion of the purchase<sup>6</sup>. An estate contract and a Class D<sup>7</sup> land charge created or entered into on or after 1 January 1926 is void against a purchaser for money or money's worth<sup>8</sup> (or, in the case of an Inland Revenue charge<sup>9</sup>, a purchaser within the meaning of the Inheritance Tax Act 1984<sup>10</sup>) of a legal estate<sup>11</sup> in the land charged with it, unless the charge is registered in the appropriate register before completion of the purchase<sup>12</sup>.

After the expiration of one year from the first conveyance<sup>13</sup> occurring on or after 1 January 1926 of a Class B or Class C land charge created before that date, the person entitled to the charge is not able to enforce or recover the charge or any part of it as against a purchaser of the land charged with it, or of any interest in the land, unless the charge is registered in the appropriate register before the completion of the purchase<sup>14</sup>.

1 As to charges within Class B see PARA 625 ante.

2 As to charges within Class C see PARA 628 ante.

3 As to estate contracts see PARA 632 ante.

4 For the meaning of 'purchaser' see PARA 616 note 16 ante.

5 As to the meaning of 'land' see PARA 607 note 6 ante.

6 Land Charges Act 1972 s 4(5). As to the registers see PARA 607 ante. As to notice see PARA 616 ante.

7 As to charges within Class D see PARA 633 ante.

8 As to the meaning of 'purchaser for money or money's worth' see *Midland Bank Trust Co Ltd v Green* [1981] AC 513, [1981] 1 All ER 153, HL (the Land Charges Act 1972 s 4(6) (as amended) (see the text and note 12 infra) is not to be qualified by any requirement that a purchaser must take in good faith or that the money paid must not be nominal).

9 As to Inland Revenue charges see PARA 634 ante.

10 See PARA 634 note 6 ante; and INHERITANCE TAXATION vol 24 (Reissue) PARA 514. As to the Inheritance Tax Act 1984 see PARA 630 note 3 ante; and INHERITANCE TAXATION vol 24 (Reissue) PARA 402 et seq.

11 For the meaning of 'legal estate' see PARA 609 note 5 ante.

12 Land Charges Act 1972 s 4(6) (amended by the Finance Act 1975 s 52(1), Sch 12 paras 2, 18(1), (5); and the Inheritance Tax Act 1984 s 276, Sch 8 para 3(2)). As to an estate contract see *Hollington Bros Ltd v Rhodes* [1951] 2 All ER 578n; *Beesly v Hallwood Estates Ltd* [1960] 2 All ER 314, [1960] 1 WLR 549 (affd on another point [1961] Ch 105, [1961] 1 All ER 90, CA); *McCarthy and Stone Ltd v Julian S Hodge & Co Ltd* [1971] 2 All ER 973, [1971] 1 WLR 1547.

13 For the meaning of 'conveyance' see PARA 605 note 3 ante.

14 Land Charges Act 1972 s 4(7).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(iii) Position of Purchaser on Omission to Register/644. Unregistered Class F land charges.

**644. Unregistered Class F land charges.**

A Class F<sup>1</sup> land charge is void as against a purchaser<sup>2</sup> of the land<sup>3</sup> charged with it, or of any interest in that land, unless it is registered in the appropriate register<sup>4</sup> before the completion of the purchase<sup>5</sup>.

- 1 As to charges within Class F see PARA 638 ante.
- 2 For the meaning of 'purchaser' see PARA 616 note 16 ante.
- 3 As to the meaning of 'land' see PARA 607 note 6 ante.
- 4 As to the registers see PARA 607 ante.
- 5 Land Charges Act 1972 s 4(8). For the meaning of 'purchase' see PARA 632 note 4 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(iv) Vacation of Registration/645. Vacation and cancellation of a land charge.

#### **(iv) Vacation of Registration**

##### **645. Vacation and cancellation of a land charge.**

Subject to the provisions of the Land Charges Act 1972, the registration of a land charge may be vacated pursuant to a court order<sup>1</sup>. It has been held that where the question whether or not an entry on the register of an estate contract<sup>2</sup> ought to be vacated depended on whether or not the contract subsisted, this procedure was inappropriate to obtain adjudication on the existence or non-existence of the contract<sup>3</sup>. However, it now appears that an order may be made where there is no prima facie case for asserting that a contract exists<sup>4</sup>. In addition to its statutory power, the High Court has inherent jurisdiction to order vacation of an entry in the register<sup>5</sup>. Where the registrar<sup>6</sup> is satisfied that an application<sup>7</sup> to cancel the whole or part of the entry has been properly made, the registration is to be cancelled without a court order<sup>8</sup>.

1 Land Charges Act 1972 s 1(6). 'Court' means the High Court, or the county court in a case where that court has jurisdiction: s 17(1); and see PARA 646 post.

2 As to estate contracts see PARA 632 ante.

3 *Re Engall's Agreement* [1953] 2 All ER 503, [1953] 1 WLR 977; see also *Re 462 Green Lane, Ilford, Gooding v Borland* [1971] 1 All ER 315, [1971] 1 WLR 138.

4 *Heywood v BDC Properties Ltd* [1963] 2 All ER 1063, [1963] 1 WLR 975, CA. The order may be made by way of interim relief on motion in a case where it is clear either that a contract never existed or that it has come to an end and there is no arguable or triable issue on that point: see *Boobyer v Thornville Properties Ltd* (1968) 19 P & CR 768; *Thomas v Rose* [1968] 3 All ER 765, [1968] 1 WLR 1797; *Trustees of Ancient Order of Foresters Friendly Society v Goldstraw* (1972) 222 Estates Gazette 1757; *Hooker v Wyle* [1973] 3 All ER 707, [1974] 1 WLR 235; and see also *Georgiades v Edward Wolfe & Co Ltd* [1965] Ch 487, [1964] 3 All ER 433, CA.

5 See *Heywood v BDC Properties Ltd (No 2)* [1964] 2 All ER 702, [1964] 1 WLR 971, CA; *Calgary and Edmonton Land Co Ltd v Dobinson* [1974] Ch 102, [1974] 1 All ER 484.

6 As to the meaning of 'registrar' see PARA 602 note 2 ante.

7 As to the meaning of 'application' see PARA 609 note 10 ante.

8 See the Land Charges Rules 1974, SI 1974/1286, r 9; and PARA 619 ante. As to the evidence which must accompany that application see rr 10, 11; and PARA 619 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(1) LAND CHARGES/(iv) Vacation of Registration/646. County court jurisdiction.

#### **646. County court jurisdiction.**

A county court has jurisdiction to order the vacation of the registration of a land charge<sup>1</sup> in the case of:

- 30 (1) a puisne mortgage<sup>2</sup>, limited owner's charge<sup>3</sup> or Inland Revenue charge<sup>4</sup>, if the amount does not exceed £30,000<sup>5</sup>;
- 31 (2) a general equitable charge<sup>6</sup>, if it is for a specified capital sum not exceeding £30,000 or, where the charge is not for a specified capital sum of money, if the capital value of the land<sup>7</sup> affected does not exceed £30,000<sup>8</sup>;
- 32 (3) a charge of Class A<sup>9</sup> or Class B<sup>10</sup>, or an estate contract<sup>11</sup>, restrictive covenant<sup>12</sup> or equitable easement<sup>13</sup> or a charge of Class E<sup>14</sup>, if the capital value of the land affected does not exceed £30,000<sup>15</sup>; and
- 33 (4) in a case where the land charge is within Class F<sup>16</sup>, if the land affected by the charge is the subject of an order made by the court under the provisions of the Matrimonial Homes Act 1983<sup>17</sup> or of the Family Law Act 1996<sup>18</sup> or an application for an order<sup>19</sup> relating to that land has been made to the court<sup>20</sup>.

1 See the Land Charges Act 1972 s 1(6); and PARA 645 note 1 ante.

2 I.e. a Class C (i) land charge under *ibid* s 2(4)(i): see PARA 629 ante.

3 I.e. a Class C (ii) land charge under *ibid* s 2(4)(ii) (as amended): see PARA 630 ante.

4 I.e. a Class D (i) land charge under *ibid* s 2(5)(i) (as amended): see PARA 634 ante.

5 *Ibid* s 1(6A)(a) (s 1(6A) added by the County Courts Act 1984 s 148(1), Sch 2 Pt IV para 16; and substituted by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(8), Schedule).

6 I.e. a Class C (iii) land charge under the Land Charges Act 1972 s 2(4)(iii) (as amended): see PARA 631 ante.

7 As to the meaning of 'land' see PARA 607 note 6 ante.

8 Land Charges Act 1972 s 1(6A)(b) (as added and substituted: see note 5 supra).

9 As to charges within Class A see PARA 624 ante.

10 As to charges within Class B see PARA 625 ante.

11 I.e. a Class C (iv) land charge within the Land Charges Act 1972 s 2(4)(iv): see PARA 632 ante.

12 I.e. a Class D (ii) land charge within *ibid* s 2(5)(ii): see PARA 635 ante.

13 I.e. a Class D (iii) land charge within *ibid* s 2(5)(iii): see PARA 636 ante.

14 As to charges within Class E see PARA 637 ante.

15 Land Charges Act 1972 s 1(6A)(c) (as added and substituted: see note 5 supra).

16 As to charges within Class F see PARA 638 ante.

17 I.e. under the Matrimonial Homes Act 1983 s 1 (repealed: see now the Family Law Act 1996 Pt IV (ss 30-63) (as amended); and PARA 638 ante).

18     le under the Family Law Act 1996 s 33 (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 292).  
See also PARA 638 ante.

19     le under either the Matrimonial Homes Act 1983 s 1 (repealed: see now the Family Law Act 1996 Pt IV (as amended); and PARA 638 ante) (see note 17 supra) or the Family Law Act 1996 s 33 (see note 18 supra).

20     Land Charges Act 1972 s 1(6A)(d) (as added and substituted (see note 5 supra); and amended by the Family Law Act 1996 s 66(1), Sch 8 Pt III para 46).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(2) PENDING ACTIONS/647. What may be registered as a pending action.

## **(2) PENDING ACTIONS**

### **647. What may be registered as a pending action.**

There may be registered in the register of pending actions<sup>1</sup>: (1) a pending land action<sup>2</sup>; and (2) a petition in bankruptcy<sup>3</sup> filed on or after 1 January 1926<sup>4</sup>.

1 The doctrine of lis pendens rests upon the foundation that it would plainly be impossible that any action or suit could be brought to a successful conclusion if alienations pendente lite were permitted to prevail: *Bellamy v Sabine* (1857) 1 De G & J 566 at 584 per Turner LJ. A creditor's claim for administration is a pending action: *Price v Price* (1887) 35 ChD 297; cf *Kinsman v Kinsman* (1831) 1 Russ & M 617 (where a decree for account not carried into effect was not considered a pending action). If the question involved in the litigation in respect of which the pending action is registered does not affect the title to land, the pending action will not be a bar to the completion of a purchase of the land: *Bull v Hutchens* (1863) 32 Beav 615. As to the register see PARA 607 ante.

2 Land Charges Act 1972 s 5(1)(a). 'Pending land action' means any claim or proceeding pending in court relating to land or any interest in or charge on land: s 17(1). As to restraint orders see the Proceeds of Crime Act 2002 ss 40-47; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 424. A claim or proceeding may be registered as a pending land action only if some proprietary right or interest in land is claimed; it is not sufficient merely to claim that the owner should be restrained from exercising his powers of disposing of land: see *Calgary and Edmonton Land Co Ltd v Dobinson* [1974] Ch 102, [1974] 1 All ER 484. A pending land action cannot be registered by a non-counterclaiming defendant: see *Heywood v BDC Properties Ltd (No 2)* [1964] 2 All ER 702, [1964] 1 WLR 971, CA. The purpose of registration is to prevent disposition of land, so that in *Taylor v Taylor* [1968] 1 All ER 843, [1968] 1 WLR 378, CA, the registration of a suit demanding that land be disposed of was ordered to be vacated. A claim in which the existence of an easement is directly in issue is a pending land action: *Allen v Greenhi Builders Ltd* [1978] 3 All ER 1163, sub nom *Greenhi Builders v Allen* [1979] 1 WLR 156. The interest claimed need not be an existing one, so that an application for a transfer of property order under the Matrimonial Causes Act 1973 s 24 (as amended) affecting specified property, is registrable as a pending land action: *Whittingham v Whittingham* [1978] 3 All ER 805, CA. An application for a property adjustment order under the Matrimonial Causes Act 1973 s 24 (as amended) which is made in general terms may also be registered as a pending land action: see *Perez-Adamson v Perez-Rivas* [1987] Fam 89, [1987] 3 All ER 20, CA. A claim to money is not a pending land action and does not become a pending land action merely because the claimant seeks an order that until payment the money should be a charge on the land: *Haslemere Estates Ltd v Baker* [1982] 3 All ER 525, [1982] 1 WLR 1109. Proceedings which, if successful, would destroy an interest in land are proceedings which relate to the land and are registrable as a pending land action: see *Selim Ltd v Bickenhall Engineering Ltd* [1981] 3 All ER 210, [1981] 1 WLR 1318 (an application by a landlord for leave to commence proceedings for breach of covenant to repair and for forfeiture was registrable); *Willies-Williams v National Trust for Places of Historic Interest or Natural Beauty* (1993) 65 P & CR 359, [1993] EGCS 1, CA (proceedings in which it was claimed that rights of way which had been extinguished were registrable). A lessee's claim to enforce a repairing covenant, being merely a claim to enforce a contractual right, is not a pending land action, even if coupled with a claim for an order requiring that repairs be carried out: *Regan & Blackburn Ltd v Rogers* [1985] 2 All ER 180, [1985] 1 WLR 870.

3 A petition in bankruptcy is registrable whether or not it affects land. As to the duty to register the petition as a pending action see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 419.

4 Land Charges Act 1972 s 5(1)(b).

## **UPDATE**

### **647 What may be registered as a pending action**

NOTE 2--See also *Godfrey v Torpey* [2006] EWHC 1423 (Ch), [2007] BPIR 1063.





Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(2) PENDING ACTIONS/648. Application for registration of a pending action.

#### **648. Application for registration of a pending action.**

Subject to general rules under the Land Charges Act 1972<sup>1</sup>, every application for registration in the register of pending actions<sup>2</sup> must contain particulars of the title of the proceedings and the name, address and description of the estate owner<sup>3</sup> or other person whose estate or interest is intended to be affected<sup>4</sup>. The application for registration must also state: (1) if it relates to a pending land action<sup>5</sup>, the court<sup>6</sup> in which and the day on which the action was commenced<sup>7</sup>; and (2) if it relates to a petition in bankruptcy, the court in which and the day on which the petition was filed<sup>8</sup>. An application to register a petition in bankruptcy against a firm must state the names and addresses of the partners, and the registration must be effected against each partner as well as against the firm<sup>9</sup>.

1     le under the Land Charges Act 1972 s 16 (as amended) (see PARA 604 ante); see s 5(2). As to applications for registration generally see PARA 610 ante.

2     As to what may be registered as a pending action see PARA 647 ante. As to the register see PARA 607 ante.

3     As to the meaning of 'estate owner' see PARA 609 note 2 ante.

4     Land Charges Act 1972 s 5(2). For the form of application for registration of a pending action see the Land Charges Rules 1974, SI 1974/1286, rr 2(3), 5, Sch 2 Form K3. The fee is £1 per name: see the Land Charges Fees Order 1990, SI 1990/323, art 2; and the Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 1. There is no fee for the registration of a petition in bankruptcy if the application is made by the registrar of the court in which the petition is filed: Land Charges Act 1972 s 5(6). As to fees generally see PARA 612 ante. As to acknowledgment of applications generally see PARA 621 ante.

5     For the meaning of 'pending land action' see PARA 647 note 2 ante.

6     For the meaning of 'court' see PARA 645 note 1 ante.

7     Land Charges Act 1972 s 5(3)(a).

8     Ibid s 5(3)(b).

9     Ibid s 5(5).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(2) PENDING ACTIONS/649. Contents of register of pending actions.

#### **649. Contents of register of pending actions.**

The register of pending actions contains the particulars set out in applications for registration<sup>1</sup>. They must be entered in the register<sup>2</sup> by the registrar<sup>3</sup> in the name of the estate owner<sup>4</sup> or other person whose estate or interest is intended to be affected<sup>5</sup>. In addition to the date on which the entry is registered and the date, if any, on which the registration is renewed<sup>6</sup>, the register contains:

- 34 (1) in the case of a pending land action<sup>7</sup>:
  - 1
    1. (a) the name and address of the person on whose behalf the application<sup>8</sup> is made<sup>9</sup>;
    2. (b) the nature of the action or proceeding<sup>10</sup>;
    3. (c) the court<sup>11</sup> in which and the day on which the action or proceeding was commenced or filed and the title of the action or proceeding<sup>12</sup>;
    4. (d) the name and address of the estate owner whose estate is intended to be affected<sup>13</sup>;
    5. (e) the county<sup>14</sup> and district in which the land affected is situated, together with a short description identifying the land so far as practicable<sup>15</sup>; and
    6. (f) the official reference number of the priority notice<sup>16</sup>, if any, pursuant to which the application is expressed to be made<sup>17</sup>; and
  - 2
  - 35 (2) in the case of a petition in bankruptcy:
    - 3
      7. (a) the petitioner's name and address<sup>18</sup>;
      8. (b) the court in which and day on which the petition was filed<sup>19</sup>; and
      9. (c) the name, address and description of the debtor, and, in the case of a debtor firm, of each partner<sup>20</sup>.
    - 4

1 As to applications for registration of a pending action see PARA 648 ante. As to applications for registration generally see PARA 610 ante.

2 As to the register see PARA 607 ante.

3 As to the meaning of 'registrar' see PARA 602 note 2 ante.

4 As to the meaning of 'estate owner' see PARA 609 note 2 ante.

5 Land Charges Act 1972 s 5(4). Where a person has died and a pending land action would apart from his death have been registered in his name, it is to be so registered notwithstanding his death: s 5(4A) (added by the Law of Property (Miscellaneous Provisions) Act 1994 s 15(1), (3), (5)). The Land Charges Act 1972 s 5(4A) (as added) does not apply where the application for registration was made before 1 July 1995, but without prejudice to a person's right to make a new application on or after that date. As to the completion of the relevant application form in such a case see the Land Charges Rules 1974, SI 1974/1286, rr 2(3), 19A (as added), Sch 2 Form K3; and PARA 609 ante.

6 See *ibid* r 3(1); and PARA 609 ante. As to renewal of registrations see PARA 652 post.

7 For the meaning of 'pending land action' see PARA 647 note 2 ante.

8 As to the meaning of 'application' see PARA 609 note 10 ante.

9 Land Charges Rules 1974, SI 1974/1286, r 3(1), Sch 1 item 2(a)(i).

- 10 Ibid Sch 1 item 2(a)(ii).
- 11 For the meaning of 'court' see PARA 645 note 1 ante.
- 12 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 2(a)(iii).
- 13 Ibid Sch 1 item 2(a)(iv).
- 14 As to the meaning of 'county' see PARA 623 note 8 ante.
- 15 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 2(a)(v).
- 16 As to priority notices see PARA 614 ante.
- 17 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 2(a)(vi).
- 18 Ibid Sch 1 item 2(b)(i).
- 19 Ibid Sch 1 item 2(b)(ii).
- 20 Ibid Sch 1 item 2(b)(iii).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(2) PENDING ACTIONS/650. Unregistered pending actions.

### **650. Unregistered pending actions.**

A pending land action<sup>1</sup> does not bind a purchaser<sup>2</sup> without express notice<sup>3</sup> of it, unless it is for the time being registered in the register of pending actions<sup>4</sup>. A petition in bankruptcy does not bind a purchaser of a legal estate<sup>5</sup> in good faith for money or money's worth, unless it is for the time being registered in the register of pending actions<sup>6</sup>.

Where a petition in bankruptcy has been registered in the register of pending actions<sup>7</sup>, the title of the trustee in bankruptcy is void as against a purchaser of a legal estate in good faith for money or money's worth claiming under a conveyance<sup>8</sup> made after the date of registration, unless at the date of the conveyance either the registration of the petition is in force or a receiving order<sup>9</sup> on the petition is registered in the register of writs and orders<sup>10</sup>.

1 For the meaning of 'pending land action' see PARA 647 note 2 ante.

2 For the meaning of 'purchaser' see PARA 616 note 16 ante.

3 As to notice generally see PARA 616 ante; and EQUITY vol 16(2) (Reissue) PARA 576 et seq.

4 Land Charges Act 1972 s 5(7). As to what may be registered as a pending action see PARA 647 ante. As to the register see PARA 607 ante.

5 For the meaning of 'legal estate' see PARA 609 note 5 ante.

6 Land Charges Act 1972 s 5(8) (amended by the Insolvency Act 1985 s 235(1), Sch 8 para 21(2)).

7 Ie under the Land Charges Act 1972 s 5 (as amended).

8 For the meaning of 'conveyance' see PARA 605 note 3 ante.

9 Ie a receiving order under the Bankruptcy Act 1914 (repealed), which was registrable under the Land Charges Act 1972 s 6(1)(c) (as originally enacted).

10 Ibid s 6(6) (amended by the Insolvency Act 1985 s 235(3), Sch 10 Pt III). As to the registration of writs and orders see PARA 654 et seq post.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(2) PENDING ACTIONS/651. Registered land.

### **651. Registered land.**

As soon as practicable after registration of a petition in bankruptcy as a pending action<sup>1</sup>, the registrar<sup>2</sup> must enter in the register a notice<sup>3</sup> in relation to any registered estate or charge which appears to him to be affected<sup>4</sup>.

1 As to the registration of a petition in bankruptcy as a pending action see PARAS 647-649 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 419.

2 As to the meaning of 'registrar' see PARA 602 note 2 ante.

3 Unless cancelled by the registrar in such manner as rules may provide, such a notice continues in force until a restriction is entered in the register under the Land Registration Act 2002 s 86(4) (see PARA 659 post) or the trustee in bankruptcy is registered: s 86(3). Nothing in s 86 requires a person to whom a registrable disposition is made to make any search under the Land Charges Act 1972. As to notices under the Land Registration Act 2002 see LAND REGISTRATION vol 26 (2004 Reissue) PARA 995 et seq. As to the protection to buyers see s 86(5); and LAND REGISTRATION vol 26 (2004 Reissue) PARA 1014.

4 Ibid s 86(2); Land Charges Act 1972 s 18(6). See further LAND REGISTRATION vol 26 (2004 Reissue) PARA 1014.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(2) PENDING ACTIONS/652. Duration of registration.

**652. Duration of registration.**

The registration of a pending action<sup>1</sup> ceases to have effect at the end of the period of five years from the date on which it is made, but may be renewed from time to time, and, if so renewed, has effect for five years from the date of renewal<sup>2</sup>.

<sup>1</sup> As to registration of pending actions see PARAS 647-649 ante.

<sup>2</sup> Land Charges Act 1972 s 8. Re-registration is effective even though the registration is not renewed within the five years except against purchasers taking in the interval between the expiry of a registration and its renewal: *Shaw v Neale* (1858) 6 HL Cas 581. For the form for an application for renewal of a registration see the Land Charges Rules 1974, SI 1974/1286, rr 2(3), 5, Sch 2 Form K7. As to applications generally see PARA 610 ante. The fee for the application is £1 per name: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 1. As to fees generally see PARA 612 ante. As to acknowledgment of applications generally see PARA 621 ante. In the case of a petition in bankruptcy see also the Land Charges Act 1972 s 16(2) (as amended); and PARA 604 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(2) PENDING ACTIONS/653. Vacation of registration.

### **653. Vacation of registration.**

Upon the determination of proceedings, or during them if the court is satisfied they are not prosecuted in good faith<sup>1</sup>, the court<sup>2</sup> may, if it thinks fit, make an order vacating a registration of the pending action and direct the party on whose behalf it was made to pay all or any of the costs and expenses occasioned by the registration and by its vacation<sup>3</sup>. The court has a general jurisdiction under the Land Charges Act 1972<sup>4</sup> to make an order pursuant to which any registration including a pending action may be vacated<sup>5</sup>. In other cases vacation may be ordered under the court's inherent jurisdiction<sup>6</sup>.

The vacation of the registration of a petition in bankruptcy in the register of pending actions is effected pursuant to a court order<sup>7</sup>.

1 Findings of the judge and of the Court of Appeal that a claim is frivolous and vexatious and an abuse of the process of the court are sufficient to satisfy the court that proceedings are not prosecuted in good faith: *Calgary and Edmonton Land Co Ltd v Discount Bank (Overseas) Ltd* [1971] 1 All ER 551, [1971] 1 WLR 81.

2 For the meaning of 'court' see PARA 645 note 1 ante. A county court has jurisdiction where the claim was brought or the petition in bankruptcy was filed in the county court: Land Charges Act 1972 s 5(11) (added by the County Courts Act 1984 s 148(1), Sch 2 Pt IV para 17). The general rules of practice and procedure apply: see CPR 2.1(1); and CIVIL PROCEDURE vol 11 (2009) PARA 32. As no provision is made in the Land Charges Act 1972 as to appeals, it seems that the general provisions as to appeals from the county court apply: see CPR Sch 2 CCR Ord 3 r 6; and CIVIL PROCEDURE vol 12 (2009) PARA 1679.

3 Land Charges Act 1972 s 5(10).

4 *Ie* under *ibid* s 1(6): see PARAS 645-646 ante.

5 See *Northern Development (Holdings) Ltd v UDT Securities* [1977] 1 All ER 747, [1976] 1 WLR 1230.

6 See *Heywood v BDC Properties Ltd (No 2)* [1964] 2 All ER 702, [1964] 1 WLR 971, CA; *Taylor v Taylor* [1968] 1 All ER 843, [1968] 1 WLR 378, CA; *Calgary and Edmonton Land Co Ltd v Dobinson* [1974] Ch 102, [1974] 1 All ER 484; *Norman v Hardy* [1974] 1 All ER 1170, [1974] 1 WLR 1048. As to applications for cancellation see PARA 619 ante.

7 For the circumstances in which the court may make such an order see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.



Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(3) WRITS AND ORDERS AFFECTING LAND/654. What may be registered.

### (3) WRITS AND ORDERS AFFECTING LAND

#### 654. What may be registered.

There may be registered in the register of writs and orders affecting land<sup>1</sup>: (1) any writ or order affecting land issued or made by any court<sup>2</sup> for the purpose of enforcing a judgment<sup>3</sup> or recognisance<sup>4</sup>; (2) any order appointing a receiver or sequestrator of land<sup>5</sup>; (3) any bankruptcy order, whether or not the bankrupt's estate is known to include land<sup>6</sup>; and (4) any access order under the Access to Neighbouring Land Act 1992<sup>7</sup>. No writ or order affecting an interest under a trust of land may be registered in the register of writs and orders<sup>8</sup>.

An order authorising the trustees of a settlement<sup>9</sup> to exercise the powers of a tenant for life<sup>10</sup>, who has by reason of bankruptcy, assignment, incumbrance or otherwise ceased to have a substantial interest in his estate or interest in the settled land<sup>11</sup> or any part of it, and who has unreasonably refused to exercise his statutory powers<sup>12</sup>, may be registered as an order affecting land<sup>13</sup>.

1 As to the meaning of 'land' see PARA 607 note 6 ante. As to the register see PARA 607 ante. Court orders imposing charges on judgment debtors' land are orders affecting land for this purpose: see PARA 655 post.

2 For the meaning of 'court' see PARA 645 note 1 ante.

3 'Judgment' includes any order or decree having the effect of a judgment: Land Charges Act 1972 s 17(1). As to the enforcement of judgments and orders see CPR Sch 1 RSC Ord 45; and CIVIL PROCEDURE vol 12 (2009) PARA 1223 et seq.

4 Land Charges Act 1972 s 6(1)(a). A freezing order (formerly known as a 'Mareva injunction': see CIVIL PROCEDURE vol 11 (2009) PARA 396 et seq) is not an order made 'for the purposes of enforcing a judgment' and is not registrable under s 6(1)(a): *Stockler v Fourways Estates Ltd* [1983] 3 All ER 501, [1984] 1 WLR 25. As to restraint orders see now the Proceeds of Crime Act 2002 ss 40-47; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 424.

Where a person has died and any such writ or order of the kind mentioned in the Land Charges Act 1972 s 6(1)(a) (see head (1) in the text) would apart from his death have been registered in his name, it is to be so registered notwithstanding his death: s 6(2A) (added by the Law of Property (Miscellaneous Provisions) Act 1994 s 15(1), (4), (5)). The Land Charges Act 1972 s 6(2A) (as added) does not apply where the application for registration was made before 1 July 1995, but without prejudice to a person's right to make a new application on or after that date.

5 Ibid s 6(1)(b). Such orders are not limited to receiverships which could bind a purchaser, but apply to any receivership of land: *Clayhope Properties Ltd v Evans* [1986] 2 All ER 795, [1986] 1 WLR 1223, CA. Where a person has died and any such writ or order of the kind mentioned in the Land Charges Act 1972 s 6(1)(b) (see head (2) in the text) would apart from his death have been registered in his name, it is to be so registered notwithstanding his death: s 6(2A) (as added: see note 4 supra). As to sequestration and orders appointing receivers see BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

6 Ibid s 6(1)(c) (substituted by the Insolvency Act 1985 s 235(1), Sch 8 para 21(3)).

7 Land Charges Act 1972 s 6(1)(d) (added by the Access to Neighbouring Land Act 1992 s 5(1)). See EASEMENTS AND PROFITS A PRENDRE.

8 Land Charges Act 1972 s 6(1A) (added by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 12(1), (3)). For the meaning of 'trust of land' see PARA 631 note 2 ante; definition applied by virtue of the Interpretation Act 1978 s 5, Sch 1 (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 16)).

9 As to the meaning of 'settlement' see PARA 631 note 3 ante.

10 As to the meaning of 'tenant for life' see PARA 630 note 1 ante.

11 As to the meaning of 'settled land' see PARA 605 note 3 ante.

12 Is an order under the Settled Land Act 1925 s 24(1): see s 24(1).

13 See *ibid* s 24(1), (2). While that order is in force, the tenant for life must not, in relation to the settled land or the part affected, exercise any of the powers authorised to be exercised in his name and on his behalf, but no person dealing with the tenant for life in relation to the settled land is affected by that order unless it is for the time being registered as an order affecting land: s 24(2). See also SETTLEMENTS.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(3) WRITS AND ORDERS AFFECTING LAND/655. Charging orders on land of judgment debtors.

**655. Charging orders on land of judgment debtors.**

The Land Charges Act 1972 applies in relation to charging orders<sup>1</sup> as it applies in relation to other orders or writs issued or made for the purpose of enforcing judgments<sup>2</sup>.

1     le charging orders under the Charging Orders Act 1979 s 1 (as amended), to enforce judgments or orders of the High Court or a county court (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARAS 678, 683, 684).

2     Ibid s 3(2).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(3) WRITS AND ORDERS AFFECTING LAND/656. Application for registration of a writ or order affecting land.

# **656. Application for registration of a writ or order affecting land.**

An application<sup>1</sup> for registration of a writ or order<sup>2</sup> affecting land<sup>3</sup> must be in the prescribed form<sup>4</sup>. The fee for the application is also prescribed<sup>5</sup>, but no fee is charged for the registration of a bankruptcy order if the application for registration is made by the official receiver<sup>6</sup>.

1 As to the meaning of 'application' see PARA 609 note 10 ante.

2 As to what may be registered see PARAS 654-655 ante. As to the register see PARA 607 ante.

3 As to the meaning of 'land' see PARA 607 note 6 ante.

4 Land Charges Rules 1974, SI 1974/1286, r 5. For the prescribed form see rr 2(3), 5, Sch 2 Form K4. As to applications for registration generally see PARA 610 ante. As to acknowledgment of applications see PARA 621 ante.

5 The fee payable is £1 per name: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 1. As to fees generally see PARA 612 ante.

6 Land Charges Act 1972 s 6(3) (amended by the Insolvency Act 1985 s 235, Sch 8 para 21). As to the official receiver see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 31 et seq.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(3) WRITS AND ORDERS AFFECTING LAND/657. Contents of register of writs and orders affecting land.

### **657. Contents of register of writs and orders affecting land.**

Every entry in the register of writs and orders<sup>1</sup> affecting land<sup>2</sup> must be made in the name of the estate owner<sup>3</sup> or other person whose land, if any, is affected by the writ or order registered<sup>4</sup>. The registrar<sup>5</sup> must record in the register the date on which the entry is registered<sup>6</sup>, the date, if any, on which the registration is renewed<sup>7</sup>, and the relevant particulars<sup>8</sup> of the registration<sup>9</sup>. In relation to writs and orders, other than bankruptcy orders<sup>10</sup>, those particulars are:

- 36 (1) the name and address of the person on whose behalf the application for registration is made<sup>11</sup>;
- 37 (2) the nature and date of the writ or order<sup>12</sup>;
- 38 (3) the court<sup>13</sup> by which the writ or order was issued or made and the title of the claim or matter<sup>14</sup>;
- 39 (4) the name and address of the estate owner whose land is affected<sup>15</sup>;
- 40 (5) the county<sup>16</sup> and district in which the land is situated, together with a short description identifying the land so far as practicable<sup>17</sup>; and
- 41 (6) the official reference number of the priority notice<sup>18</sup>, if any, pursuant to which the application for registration is expressed to be made<sup>19</sup>.

In the case of a bankruptcy order<sup>20</sup>, the relevant particulars are: (a) the petitioner's name and address<sup>21</sup>; (b) the court in which and day on which the receiving order was made<sup>22</sup>; and (c) the debtor's name and address and description<sup>23</sup>.

1 As to what may be registered see PARAS 654-655 ante. As to the register see PARA 607 ante.

2 As to the meaning of 'land' see PARA 607 note 6 ante.

3 As to the meaning of 'estate owner' see PARA 609 note 2 ante.

4 Land Charges Act 1972 s 6(2). As to registration in the name of a person who has died see PARA 654 notes 4-5 ante. For the relevant application form in such a case see the Land Charges Rules 1974, SI 1974/1286, rr 2(3), 19A (as added), Sch 2 Form K4; and PARA 609 ante.

5 As to the meaning of 'registrar' see PARA 602 note 2 ante.

6 As to applications for registration of a writ or order affecting land see PARA 656 ante.

7 As to renewal of registration see PARA 660 post.

8 'Relevant particulars' means particulars specified in the Land Charges Rules 1974, SI 1974/1286, Sch 1 which have been furnished in an application: r 2(2). See the text and notes 11-23 infra. As to the meaning of 'application' see PARA 609 note 10 ante.

9 See *ibid* r 3(1); and PARA 609 ante.

10 *Ibid* r 3(1), Sch 1 item 3(a) (amended by SI 1986/2001).

11 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 3(a)(i).

12 *Ibid* Sch 1 item 3(a)(ii).

13 For the meaning of 'court' see PARA 645 note 1 ante. See further PARA 655 ante.

- 14 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 3(a)(iii).
- 15 Ibid Sch 1 item 3(a)(iv).
- 16 As to the meaning of 'county' see PARA 623 note 8 ante.
- 17 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 3(a)(v).
- 18 As to priority notices see PARA 614 ante.
- 19 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 3(a)(vi).
- 20 Ibid Sch 1 item 3(b) (amended by SI 1986/2001).
- 21 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 3(b)(i).
- 22 Ibid Sch 1 item 3(b)(ii).
- 23 Ibid Sch 1 item 3(b)(iii).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(3) WRITS AND ORDERS AFFECTING LAND/658. Position of purchasers in relation to unregistered writs and orders.

### **658. Position of purchasers in relation to unregistered writs and orders.**

With certain exceptions<sup>1</sup>, every writ or order which may be registered in the register of writs and orders<sup>2</sup>, and every delivery in execution or other proceeding taken pursuant, or in obedience, to it, is void as against a purchaser<sup>3</sup> of the land<sup>4</sup> unless the writ or order is for the time being registered<sup>5</sup>. The title of a trustee in bankruptcy is void as against a purchaser of a legal estate<sup>6</sup> in good faith for money or money's worth unless the bankruptcy order is for the time being registered<sup>7</sup>. A purchaser has the same protection against unregistered receiving orders<sup>8</sup> in relation to the title of a trustee in bankruptcy as he has in the case of unregistered pending actions<sup>9</sup>. Furthermore, where an order imposing a charge on land for the purpose of enforcing a judgment, decree, order or award has been registered in the register of writs and orders<sup>10</sup>, then an order appointing a receiver made either in proceedings for enforcing the charge or by way of equitable execution of the judgment, decree, order or award or, as the case may be, of so much of it as requires payment of money secured by the charge, is not void against a purchaser even though that order appointing the receiver is not itself registered<sup>11</sup>.

1    Ie except as provided by the Land Charges Act 1972 s 6(5) (as substituted) (see the text and note 7 infra); the Supreme Court Act 1981 s 37(5) (see the text and note 11 infra); and the County Courts Act 1984 s 107(3) (see the text and note 11 infra).

2    Ie those writs and orders mentioned in the Land Charges Act 1972 s 6(1) (as amended) (see PARA 654 ante). As to the register see PARA 607 ante.

3    For the meaning of 'purchaser' see PARA 616 note 16 ante.

4    As to the meaning of 'land' see PARA 607 note 6 ante.

5    Land Charges Act 1972 s 6(4) (amended by the Supreme Court Act 1981 s 152(1), Sch 5; and the County Courts Act 1984 s 148(1), Sch 2 Pt IV para 18). As to registration as notice see PARA 616 ante.

6    For the meaning of 'legal estate' see PARA 609 note 5 ante.

7    Land Charges Act 1972 s 6(5) (substituted by the Insolvency Act 1985 s 235(1), Sch 8 para 21(3)). The Land Charges Act 1972 s 6(5) (as substituted) is subject to s 6(6) (as amended) (see the text and note 9 infra; and PARA 650 ante): see s 6(5) (as so substituted).

8    Ie a receiving order under the Bankruptcy Act 1914 (repealed), which was registrable under the Land Charges Act 1972 s 6(1)(c) (as originally enacted).

9    See *ibid* s 6(6) (as amended); and PARA 650 ante.

10   See PARA 655 ante.

11   See the Land Charges Act 1972 s 6(4) (as amended: see note 5 supra); the Supreme Court Act 1981 s 37(5); and the County Courts Act 1984 s 107(3).

### **UPDATE**

### **658 Position of purchasers in relation to unregistered writs and orders**

NOTES 1, 5, 11--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).





Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(3) WRITS AND ORDERS AFFECTING LAND/659. Registered land.

**659. Registered land.**

As soon as practicable after registration of a bankruptcy order<sup>1</sup>, the registrar<sup>2</sup> must, in relation to any registered estate or charge which appears to him to be affected by the order, enter in the register a restriction<sup>3</sup> reflecting the effect of the Insolvency Act 1986<sup>4</sup>.

1 As to the registration of a bankruptcy order in the register of writs and orders see PARA 654 ante.

2 As to the meaning of 'registrar' see PARA 602 note 2 ante.

3 Nothing in the Land Registration Act 2002 s 86 requires a person to whom a registrable disposition is made to make any search under the Land Charges Act 1972. As to restrictions under the Land Registration Act 2002 see LAND REGISTRATION vol 26 (2004 Reissue) PARA 1005 et seq. As to the protection to buyers see the Land Registration Act 2002 s 86(5); and LAND REGISTRATION vol 26 (2004 Reissue) PARA 1014. As to registrable dispositions see LAND REGISTRATION vol 26 (2004 Reissue) PARA 911 et seq.

4 Ibid s 86(4); Land Charges Act 1972 s 18(6). See further LAND REGISTRATION vol 26 (2004 Reissue) PARA 1014.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(3) WRITS AND ORDERS AFFECTING LAND/660. Duration of registration.

**660. Duration of registration.**

A registration in the register of writs and orders affecting land<sup>1</sup> ceases to have effect at the end of the period of five years from the date on which it is made, but may be renewed from time to time and, if so renewed, has effect for five years from the date of renewal<sup>2</sup>.

1 As to what may be registered in the register of writs and orders affecting land see PARA 654 ante. As to the register see PARA 607 ante. As to the meaning of 'land' see PARA 607 note 6 ante.

2 Land Charges Act 1972 s 8. As to the form of an application for renewal of a registration, and as to applications for renewal generally, see PARA 652 note 2 ante. As to acknowledgment of applications see PARA 621 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(3) WRITS AND ORDERS AFFECTING LAND/661. Cancellation and vacation of registration.

### **661. Cancellation and vacation of registration.**

The registration of a writ or order affecting land<sup>1</sup> must be cancelled on an application made in the prescribed manner and form<sup>2</sup> or may be vacated pursuant to a court order<sup>3</sup>.

An application must be made in the prescribed form for a certificate that the registration has been cancelled<sup>4</sup>.

1 As to what may be registered in the register of writs and orders affecting land see PARA 654 ante. As to the register see PARA 607 ante. As to the meaning of 'land' see PARA 607 note 6 ante.

2 See the Land Charges Rules 1974, SI 1974/1286, rr 9, 10; and PARA 619 ante. For the prescribed forms of application for cancellation of registration see rr 2(3), 9, 10, Sch 2 Forms K11, K12. The fee for the application is £1 per name: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 1. As to fees generally see PARA 612 ante. As to acknowledgment of applications see PARA 621 ante.

3 See the Land Charges Act 1972 s 1(6). For the meaning of 'court' see PARA 645 note 1 ante. Writs or orders affecting land are not included in the list of matters in s 1(6A) (as added, substituted and amended) (see PARA 646 ante) in respect of which the county court has jurisdiction.

4 See the Land Charges Rules 1974, SI 1974/1286, r 12. For the prescribed form of application for a certificate of cancellation see r 12, Sch 2 Form K20. The fee for the certificate is £1 per name: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, Sch 1 items 1, 2.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(4) DEEDS OF ARRANGEMENT/662. Registration of deeds of arrangement affecting land.

## **(4) DEEDS OF ARRANGEMENT**

### **662. Registration of deeds of arrangement affecting land.**

A deed of arrangement<sup>1</sup> affecting land<sup>2</sup> may be registered in the register of deeds of arrangement affecting land<sup>3</sup>, in the debtor's name, on the application<sup>4</sup> of a trustee<sup>5</sup> of the deed or a creditor assenting<sup>6</sup> to or taking the benefit of the deed<sup>7</sup>.

1 For the meaning of 'deed of arrangement' see PARA 607 note 7 ante. As to deeds generally see DEEDS AND OTHER INSTRUMENTS.

2 As to the meaning of 'land' see PARA 607 note 6 ante.

3 As to the register see PARA 607 ante.

4 As to the prescribed form for an application to register a deed of arrangement see the Land Charges Rules 1974, SI 1974/1286, rr 2(3), 5, Sch 2 Form K5. As to applications for registration generally see PARA 610 ante. The fee for an application is £1 per name: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 1. As to fees generally see PARA 612 ante. As to acknowledgment of applications see PARA 621 ante.

5 An inspector under a deed of inspectorship would appear to stand in the same position as a trustee of a deed of arrangement: see the Deeds of Arrangement Act 1914 s 1(2)(c).

6 As to what amounts to assenting see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARAS 861, 870.

7 Land Charges Act 1972 s 7(1). The deed also requires registration under the Deeds of Arrangement Act 1914: see s 2 (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 864.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(4) DEEDS OF ARRANGEMENT/663. Contents of register of deeds of arrangement affecting land.

### **663. Contents of register of deeds of arrangement affecting land.**

The register of deeds of arrangement contains (in addition to the date on which the entry was registered<sup>1</sup> and the date, if any, on which the registration was renewed<sup>2</sup>): (1) the name and address of the person on whose behalf the application<sup>3</sup> for registration was made<sup>4</sup>; (2) the date of the deed and names of the parties, or, where the creditors are numerous, of at least three creditors<sup>5</sup>; (3) the name, address and description of the debtor whose land<sup>6</sup> is affected<sup>7</sup>; (4) where practicable, the county<sup>8</sup> and district in which the land is situated together with a short description identifying it<sup>9</sup>; and (5) the official reference number of the priority notice<sup>10</sup>, if any, pursuant to which the application for registration is expressed to be made<sup>11</sup>.

1 As to registration of deeds of arrangement affecting land see PARA 662 ante. As to the register see PARA 607 ante.

2 See the Land Charges Rules 1974, SI 1974/1286, r 3(1). As to renewal of registration see PARA 665 post.

3 As to the meaning of 'application' see PARA 609 note 10 ante.

4 Land Charges Rules 1974, SI 1974/1286, r 3(1), Sch 1 item 4(i).

5 Ibid Sch 1 item 4(ii).

6 As to the meaning of 'land' see PARA 607 note 6 ante.

7 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 4(iii).

8 As to the meaning of 'county' see PARA 623 note 8 ante.

9 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 4(iv).

10 As to priority notices see PARA 614 ante.

11 Land Charges Rules 1974, SI 1974/1286, Sch 1 item 4(v).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(4) DEEDS OF ARRANGEMENT/664. Unregistered deeds of arrangement.

**664. Unregistered deeds of arrangement.**

Every deed of arrangement<sup>1</sup> is void as against a purchaser<sup>2</sup> of any land<sup>3</sup> comprised in it or affected by it unless it is for the time being registered in the register of deeds of arrangement affecting land<sup>4</sup>.

1 For the meaning of 'deed of arrangement' see PARA 607 note 7 ante.

2 For the meaning of 'purchaser' see PARA 616 note 16 ante.

3 As to the meaning of 'land' see PARA 607 note 6 ante.

4 Land Charges Act 1972 s 7(2). As to the register see PARA 607 ante. As to notice generally see PARA 616 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(4) DEEDS OF ARRANGEMENT/665. Duration of registration.

**665. Duration of registration.**

A registration of a deed of arrangement<sup>1</sup> affecting land<sup>2</sup> ceases to have effect at the end of the period of five years from the date on which it is made, but may be renewed from time to time and, if so renewed, has effect for five years from the date of renewal<sup>3</sup>.

1 For the meaning of 'deed of arrangement' see PARA 607 note 7 ante.

2 As to the meaning of 'land' see PARA 607 note 6 ante. As to registration of deeds of arrangement affecting land see PARA 662 ante.

3 Land Charges Act 1972 s 8. As to the form of an application for renewal of a registration, and as to applications for renewal generally, see PARA 652 note 2 ante. As to acknowledgment of applications see PARA 621 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(4) DEEDS OF ARRANGEMENT/666. Vacation of registration.

**666. Vacation of registration.**

The registration of a deed of arrangement<sup>1</sup> affecting land<sup>2</sup> may be vacated pursuant to a court order<sup>3</sup>.

1 For the meaning of 'deed of arrangement' see PARA 607 note 7 ante.

2 As to the meaning of 'land' see PARA 607 note 6 ante. As to registration of deeds of arrangement affecting land see PARA 662 ante.

3 Land Charges Act 1972 s 1(6). For the meaning of 'court' see PARA 645 note 1 ante. The county courts have jurisdiction to vacate registration in a case where an application for the enforcement of the trusts of a deed of arrangement (under the Deeds of Arrangement Act 1914 s 23 (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 890) could be entertained by the county court: Land Charges Act 1972 s 1(6A)(e) (s 1(6A) added by the County Courts Act 1984 s 148(1), Sch 2 Pt IV para 16; and substituted by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(8), Schedule). As to applications for cancellation generally see PARA 619 ante.



Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(5) ANNUITIES/667. Meaning of 'annuity'.

## **(5) ANNUITIES**

### **667. Meaning of 'annuity'.**

'Annuity' means a rentcharge or an annuity for a life or lives or for any term of years or greater estate determinable on a life or on lives and created after 25 April 1855 and before 1 January 1926, but does not include an annuity created by a marriage settlement<sup>1</sup> or will<sup>2</sup>.

1 As to marriage settlements see SETTLEMENTS vol 42 (Reissue) PARAS 603, 628 et seq.

2 Land Charges Act 1972 s 17(1). As to the meaning of 'will' see PARA 605 note 3 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(5) ANNUITIES/668. Continuance of registration.

# **668. Continuance of registration.**

No further entries may be made in the register of annuities<sup>1</sup>. The register must be closed when all the entries in it have been vacated<sup>2</sup> or the prescribed<sup>3</sup> evidence of the satisfaction, cesser or discharge of all the annuities has been furnished<sup>4</sup>.

Annuities are now registrable as land charges of either: (1) Class E, if created before 1 January 1926 and not registered in the register of annuities<sup>5</sup>; or (2) Class C (iii) as general equitable charges, if created on or after that date<sup>6</sup>.

1 Land Charges Act 1972 s 1(4), Sch 1 para 1. For the meaning of 'annuity' see PARA 667 ante. As to the register see PARA 607 ante.

2 As to vacation of entries in the register of annuities see PARA 670 text and notes 3-6 post.

3 For the meaning of 'prescribed' see PARA 607 note 3 ante.

4 Land Charges Act 1972 Sch 1 para 3. Because of the number of old registrations, it does not seem that this is likely to happen unless statutory authority to close the register is given.

5 See *ibid* s 2(6); and PARA 637 ante. As to Class E land charges see PARA 637 ante.

6 See *ibid* s 2(4)(iii) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 12(1), (2)). See also PARA 631 ante. As to Class C(iii) land charges see PARA 628 et seq ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(5) ANNUITIES/669. Unregistered annuities.

**669. Unregistered annuities.**

An annuity<sup>1</sup> which before 1 January 1926 was capable of being registered in the register of annuities<sup>2</sup> is void as against a creditor or a purchaser<sup>3</sup> of any interest in the land<sup>4</sup> charged with it unless it is for the time being registered in the register of annuities or in the register of land charges<sup>5</sup>.

1 For the meaning of 'annuity' see PARA 667 ante.

2 As to the continuance of registration see PARA 668 ante.

3 For the meaning of 'purchaser' see PARA 616 note 16 ante.

4 As to the meaning of 'land' see PARA 607 note 6 ante.

5 Land Charges Act 1972 s 1(4), Sch 1 para 4. This overrides *Greaves v Tofield* (1880) 14 ChD 563, CA, which decided that an unregistered annuity was good against creditors whether or not they had notice, but only good against purchasers with notice. As to registration of an annuity as a land charge see PARA 668 ante. As to the register see PARA 607 ante. As to notice see generally para 616 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/2. SUBJECTS OF CENTRAL REGISTRATION/(5) ANNUITIES/670. Overreaching and cancellation.

## **670. Overreaching and cancellation.**

An annuity<sup>1</sup> may be overreached under statutory powers on the conveyance of the legal estate affected by it<sup>2</sup>.

An entry of an annuity made in the register of annuities<sup>3</sup> before 1 January 1926 may be vacated in the prescribed manner<sup>4</sup> on the prescribed evidence<sup>5</sup> as to satisfaction, cesser or discharge being furnished<sup>6</sup>.

1 For the meaning of 'annuity' see PARA 667 ante.

2 See PARA 618 ante.

3 As to the continuance of registration see PARA 668 ante.

4 For the meaning of 'prescribed' see PARA 607 note 3 ante. For the prescribed manner see the Land Charges Rules 1974, SI 1974/1286, r 9; and PARA 619 ante.

5 See *ibid* r 10; and PARA 619 ante.

6 Land Charges Act 1972 s 1(4), Sch 1 para 2. The application is normally to be made in the prescribed form and supported by evidence of the applicant's title to apply or by an office copy of a court order justifying cancellation of the entry: see Land Charges Rules 1974, SI 1974/1286, rr 2(3), 10, Sch 2 Form K11. As to the procedure to be followed in a case where compliance with these requirements would cause the applicant exceptional hardship or expense see PARA 619 note 7 ante. In such a case it would seem that the registrar would have power to vacate a registration on proof being shown that the annuitant was, or all of them (if more than one) were, dead and that the annuity had come to an end. However, the registrar must always be consulted before such an application is made: r 10 proviso. As to the meaning of 'registrar' see PARA 602 note 2 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(1) DEFINITION AND CLASSIFICATION/671. The legislation.

### **3. LOCAL LAND CHARGES**

#### **(1) DEFINITION AND CLASSIFICATION**

##### **671. The legislation.**

The provisions of the Land Charges Act 1925 relating to local land charges were repealed with effect from 1 August 1977 and replaced by the Local Land Charges Act 1975<sup>1</sup>. The scope of local land charges has been greatly enlarged by statute since the Land Charges Act 1925, and the Local Land Charges Act 1975 contains a new definition of local land charges<sup>2</sup>, and amends a number of statutes which provided that certain matters should be registrable as if they were local land charges by conferring on those matters the status of local land charges<sup>3</sup>.

There is subordinate legislation by way of separate rules relating to local land charges, including rules as to fees<sup>4</sup>.

The Local Land Charges Act 1975 also makes provision for certain expenses to be paid out of money provided by Parliament<sup>5</sup>.

1 See the Local Land Charges Act 1975 s 19(1), Sch 2; and the Local Land Charges Act 1975 (Commencement) Order 1977, SI 1977/984.

2 See the Local Land Charges Act 1975 s 1 (as amended); and PARA 672 post. Where a charge or other matter is registrable in a local land charges register and before 1 August 1977 (ie the commencement date of the Local Land Charges Act 1975: see PARA 615 text and note 3 ante) was also registrable in a register kept under the Land Charges Act 1972, then, if before 1 August 1977 it was registered in a register kept under that Act, there is no duty to register it, or to apply for its registration, under the Local Land Charges Act 1975; and the compensation provisions of s 10 (as amended) (see PARA 694 post) do not apply in relation to it: s 5(6); Local Land Charges 1975 Act (Commencement) Order 1977, SI 1977/984. As to the registers maintained under the Land Charges Act 1972 see PARA 607 ante.

3 See the Local Land Charges Act 1975 s 17(2), Sch 1 (as amended); and PARA 674 post.

4 See PARAS 604, 612 ante.

5 See Local Land Charges Act 1975 s 15. The expenses to be paid out of money provided by Parliament are:

6 (1) any administrative expenses incurred by a Minister of the Crown or government department in consequence of the Local Land Charges Act 1975 (s 15(a));

7 (2) any expenditure incurred by a Minister of the Crown or government department in the payment of any amount recoverable from him or it under that Act by a registering authority (s 15(b)); and

8 (3) any increase attributable to that Act in the sums so payable under any other Act (s 15(c)).

For the meaning of 'registering authority' see PARA 688 post. Enactments providing for sums to be payable out of money provided by Parliament cease to have effect where such sums are payable by the National Assembly for Wales: see the Government of Wales Act 1998 s 89. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(1) DEFINITION AND CLASSIFICATION/672. Meaning of 'local land charges'.

## **672. Meaning of 'local land charges'.**

Subject to certain exceptions<sup>1</sup>, a charge or other matter affecting land<sup>2</sup> is a local land charge if it falls within any of the following descriptions:

- 42 (1) any charge<sup>3</sup> acquired either before or after 1 August 1977<sup>4</sup> by a local authority<sup>5</sup> or national park authority<sup>6</sup>, water authority<sup>7</sup>, sewerage undertaker<sup>8</sup> or new town development corporation<sup>9</sup> under the Public Health Acts 1936 and 1937, the Public Health Act 1961 or the Highways Act 1980 (or any Act repealed by that Act) or the Building Act 1984<sup>10</sup>, or any similar charge acquired by a local authority or national park authority under any other Act, whether passed before or after the Local Land Charges Act 1975, being a charge that is binding on successive owners of the land affected<sup>11</sup>;
- 43 (2) any prohibition of, or restriction on, the use of land:
- 5
  10. (a) imposed by a local authority or national park authority on or after 1 January 1926, including one embodied in a condition attached to a consent, approval or licence granted by such an authority on or after that date<sup>12</sup>; or
  11. (b) enforceable by a local authority or national park authority under a covenant or agreement made with it on or after that date<sup>13</sup>,
- 6
  - 44 which in either case is binding on successive owners of the land affected<sup>14</sup>;
- 45 (3) any prohibition of, or restriction on, the use of land:
- 7
  12. (a) imposed by a Minister of the Crown or government department on or after 1 August 1977, including one embodied in a condition attached to a consent, approval or licence granted by such a minister or department on or after that date<sup>15</sup>; or
  13. (b) enforceable by such a minister or department under any covenant or agreement made with him or it on or after that date, being a prohibition or restriction binding on successive owners of the land affected<sup>16</sup>;
- 8
  - 46 (4) any positive obligation affecting land enforceable by a Minister of the Crown, government department or local authority or national park authority under any covenant or agreement made with him or it on or after 1 August 1977 and binding on successive owners of the land affected<sup>17</sup>; and
  - 47 (5) any charge or other matter which is expressly made a local land charge by any statutory provision<sup>18</sup>.

Nothing in the Local Land Charges Act 1975 imposes any obligation to register or apply for the registration of any local land charge which immediately before 1 August 1977 was not required to be registered as a local land charge by reason of being a prohibition or restriction on the user or mode of user of land or buildings operating over the whole of the district of a local authority or over the whole of any contributory place of it<sup>19</sup>, except after the expiration of one year from that date<sup>20</sup>. In so far as any entry subsisting in a local land charges register at 1 August 1977 could have been made in that register pursuant to that Act, or to any statutory provision amended by or under that Act, it is to be treated as having been so made, but nothing in the Act renders enforceable against any purchaser whose purchase was completed

before that date any local land charge which immediately before that date was not enforceable against him<sup>21</sup>.

1 As to the exceptions see the Local Land Charges Act 1975 s 2 (as amended); and PARA 673 post.

2 'Land' includes mines and minerals, whether or not severed from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments: *ibid* s 16(1).

3 Any sum which is recoverable from successive owners or occupiers of the land in respect of which the sum is recoverable is treated as a charge, whether the sum is expressed to be a charge on the land or not: *ibid* s 1(2).

4 I.e. the commencement date of the Local Land Charges Act 1975: see PARA 615 text and note 3 ante.

5 'Local authority' is not defined for the purposes of the Local Land Charges Act 1975 but, for the purposes of the Local Government Act 1972 (see LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq), 'local authority' means a county council, a district council, a London borough council or a parish council but, in relation to Wales, means a county council, county borough council or community council: s 270(1) (amended by the Local Government Act 1985 s 102(2), Sch 17; and the Local Government (Wales) Act 1994 ss 1(4)-(8), 66(5), Sch 15 paras 1, 57). As to local government areas and authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. For the purposes of the Local Land Charges Act 1975 ss 1, 2 (both as amended), the Broads Authority is treated as a local authority or national park authority: s 1(3) (added by the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 14; and amended by the Environment Act 1995 s 78, Sch 10 para 14). As to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734.

6 As to national park authorities see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 526 et seq.

7 Water authorities were established in accordance with the Water Act 1973 s 2 (repealed) and their functions were transferred to the National Rivers Authority (now the Environment Agency), water undertakers and sewerage undertakers in accordance with the Water Act 1989: see WATER AND WATERWAYS vol 100 (2009) PARA 108. As to the Environment Agency see the Environment Act 1995 s 1; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 17.

8 As to sewerage undertakers see the Water Industry Act 1991 s 6 (as amended); and **PROTECTION OF ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 999 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 137.

9 As to new town development corporations see the New Towns Act 1981 s 3 (as amended); and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1322 et seq.

10 As to the public health legislation see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**; as to the Highways Act 1980 see HIGHWAYS, STREETS AND BRIDGES; and as to the Building Act 1984 see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS.

11 Local Land Charges Act 1975 s 1(1)(a) (amended by the Highways Act 1980 s 343(2), Sch 24 para 26; the Building Act 1984 s 133(1), Sch 6 para 16; the Water Act 1989 s 190(1), Sch 25 para 52; and the Environment Act 1995 s 78, Sch 10 para 14).

12 Local Land Charges Act 1975 s 1(1)(b)(i) (s 1(1)(b)(i), (ii) amended by the Environment Act 1995 Sch 10 para 14). See TOWN AND COUNTRY PLANNING. As to conditions imposed by planning permissions granted before 1 August 1977 see the Local Land Charges Act 1975 s 2(e) (as amended); and PARA 673 text and note 9 post.

13 *Ibid* s 1(1)(b)(ii) (as amended: see note 12 supra). See TOWN AND COUNTRY PLANNING.

14 *Ibid* s 1(1)(b) (as amended: see note 12 supra).

15 *Ibid* s 1(1)(c)(i). Section 1(1)(c) has effect as if references to the date were omitted in relation to prohibitions or restrictions imposed under the Highways Act 1980 s 73 (as amended) (power to prescribe an improvement line for widening a street: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 491 et seq), s 74 (as amended) (power to prescribe a building line: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 497 et seq), and s 79 (as amended) (prevention of obstruction to view at corners: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 502 et seq): see ss 73(12), 74(12), 79(16). In relation to prohibitions or restrictions imposed under s 177 (as amended) (restriction on construction of building over highways: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 359), the Local Land Charges Act 1975 s 1(1)(c) has effect as if references to the date were references to 1 November 1977: see the Highways Act 1980 s 177(11).

16 Local Land Charges Act 1975 s 1(1)(c)(ii). See note 15 *supra*.

17 *Ibid* s 1(1)(d) (amended by the Environment Act 1995 Sch 10 para 14). The Local Government (Miscellaneous Provisions) Act 1982 s 33 (as amended) (see TOWN AND COUNTRY PLANNING) replaces the Housing Act 1974 s 126 (repealed), but does not make express provision for covenants to be local land charges. In relation to a covenant falling within s 126(2) (repealed), the Local Land Charges Act 1975 s 1(1)(d) (as amended) continues to have effect as if the reference to the commencement of that Act had been a reference to the coming into operation of the Housing Act 1974 s 126 (repealed): see the Local Government (Miscellaneous Provisions) Act 1982 s 33(10).

18 Local Land Charges Act 1975 s 1(1)(e). 'Statutory provision' means a provision of the Local Land Charges Act 1975 or of any other Act or measure, whenever passed, or a provision of any rules, regulations, order or similar instrument made (whether before or after the passing of the Local Land Charges Act 1975) under an Act, whenever passed: s 16(1). As to matters which are local land charges by virtue of statutory provision see PARA 674 *post*. As to transitional provisions see s 19(2), (4); and the text to notes 19-21 *infra*. As to the power to make rules see s 14 (as amended); and PARA 604 *ante*.

19 *Ie* matters which were not registrable as local land charges under the Land Charges Act 1925 s 15(7)(b)(i) (repealed): see the Local Land Charges Act 1975 s 19(2).

20 See *ibid* s 19(2).

21 *Ibid* s 19(4). As to charges which immediately before 1 August 1977 were registrable both in a local land charges register and in a register kept under the Land Charges Act 1972 see the Local Land Charges Act 1975 s 5(6); and PARA 671 note 2 *ante*.

## **UPDATE**

### **672-674 Meaning of 'local land charges' ... Local land charges under statutory provision**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.



Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(1) DEFINITION AND CLASSIFICATION/673. Matters which are not local land charges.

### **673. Matters which are not local land charges.**

The following matters are not local land charges<sup>1</sup>: (1) a prohibition or restriction enforceable under a covenant or agreement made between a lessor and a lessee<sup>2</sup>; (2) a positive obligation enforceable under a covenant or agreement made between a lessor and a lessee<sup>3</sup>; (3) a prohibition or restriction enforceable by a Minister of the Crown, government department or local authority<sup>4</sup> or national park authority<sup>5</sup> under any covenant or agreement which is binding on successive owners of the land<sup>6</sup> affected by reason of the fact that the covenant or agreement is made for the benefit of land of the minister, government department or local authority or national park authority<sup>7</sup>; (4) a prohibition or restriction embodied in any byelaws<sup>8</sup>; (5) a condition or limitation subject to which planning permission was granted at any time before 1 August 1977<sup>9</sup> or was or is at any time deemed to be granted under any statutory provision<sup>10</sup> relating to town and country planning, whether by a Minister of the Crown, government department or local authority or national park authority<sup>11</sup>; (6) a prohibition or restriction embodied in a scheme under the Town and Country Planning Act 1932 or any enactment repealed by that Act<sup>12</sup>; (7) a prohibition or restriction enforceable under a forestry dedication covenant entered into pursuant to the Forestry Act 1967<sup>13</sup>; and (8) a prohibition or restriction affecting the whole of any of the following areas: (a) England, Wales or England and Wales<sup>14</sup>; (b) England, or England and Wales, with the exception of, or of any part of, Greater London<sup>15</sup>; or (c) Greater London<sup>16</sup>.

1 For the meaning of 'local land charges' see PARA 672 ante.

2 Local Land Charges Act 1975 s 2(a). An approved estate management scheme is a local land charge notwithstanding s 2(a), (b): Leasehold Reform, Housing and Urban Development Act 1993 s 70(11). See LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1736.

3 Local Land Charges Act 1975 s 2(b). See note 2 supra.

4 For the meaning of 'local authority' see PARA 672 note 5 ante.

5 As to national park authorities see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 526 et seq.

6 As to the meaning of 'land' see PARA 672 note 2 ante.

7 Local Land Charges Act 1975 s 2(c) (amended by the Environment Act 1995 s 78, Sch 10 para 14).

8 Local Land Charges Act 1975 s 2(d).

9 Ie the commencement date of the Local Land Charges Act 1975: see PARA 615 text and note 3 ante.

10 For the meaning of 'statutory provision' see PARA 672 note 18 ante.

11 Local Land Charges Act 1975 s 2(e) (amended by the Environment Act 1995 Sch 10 para 14). See TOWN AND COUNTRY PLANNING. This provision confirms *Rose v Leeds Corp* [1964] 3 All ER 618, [1964] 1 WLR 1393, CA.

12 Local Land Charges Act 1975 s 2(f).

13 Ibid s 2(g). See also the Forestry Act 1967 s 5 (as amended); and FORESTRY vol 52 (2009) PARAS 116-119.

14 Local Land Charges Act 1975 s 2(h)(i). For the meanings of 'England' and 'Wales' see PARA 634 note 9 ante.

15 Ibid s 2(h)(ii). The area comprising the areas of the London boroughs, the City of London (see PARA 688 post) and the Inner and Middle Temples constitute an administrative area to be known as Greater London: see the London Government Act 1963 s 2(1); and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

16 Local Land Charges Act 1975 s 2(h)(iii).

## **UPDATE**

### **672-674 Meaning of 'local land charges' ... Local land charges under statutory provision**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(1) DEFINITION AND CLASSIFICATION/674. Local land charges under statutory provision.

#### **674. Local land charges under statutory provision.**

The following charges and other matters have expressly been made local land charges<sup>1</sup> by statutory provision<sup>2</sup>:

- 48 (1) preservation instruments as to ancient monuments including:
  - 9 14. (a) entries in the Schedule compiled by the Secretary of State<sup>3</sup>;
  15. (b) notices of payment of compensation deposited by the Secretary of State on the subsequent grant of scheduled monument consent<sup>4</sup>;
  16. (c) guardianship deeds<sup>5</sup>;
  17. (d) easements acquired for the benefit of such monuments by the Secretary of State, the Historic Buildings and Monuments Commission for England or a local authority<sup>6</sup>;
- 10 49 (2) designation orders of areas of archaeological importance<sup>7</sup>;
- 50 50 (3) designation orders of sites of new towns<sup>8</sup> and compulsory purchase orders for purposes concerned with new towns<sup>9</sup>;
- 51 51 (4) lists of buildings of special architectural or historic interest<sup>10</sup>;
- 52 52 (5) designations of conservation areas<sup>11</sup>;
- 53 53 (6) rights as to, and wayleave orders and notices for, government oil pipelines<sup>12</sup>;
- 54 54 (7) orders or directions creating rights in, or controlling the use of, land for civil aviation purposes<sup>13</sup>;
- 55 55 (8) agreements for the use of land for cattle-grids and by-passes<sup>14</sup>;
- 56 56 (9) declarations that streets are to be maintainable by the public<sup>15</sup>;
- 57 57 (10) restrictions on building over certain underground works<sup>16</sup>;
- 58 58 (11) conditions applied to grant-aided cottages in livestock rearing areas<sup>17</sup>;
- 59 59 (12) notices as to compensation payable for depreciation of land values by planning decisions<sup>18</sup>;
- 60 60 (13) certain matters in relation to deposits or security for the expense of making up private streets<sup>19</sup>;
- 61 61 (14) compulsory rights orders and compulsory purchase orders conferring rights on the Coal Authority in connection with the opencast working of coal<sup>20</sup>;
- 62 62 (15) charges imposed under the Weeds Act 1959<sup>21</sup>;
- 63 63 (16) light obstruction notices<sup>22</sup>;
- 64 64 (17) notices requiring the execution of works to render fit houses in multiple occupation<sup>23</sup>;
- 65 65 (18) drainage schemes<sup>24</sup>;
- 66 66 (19) charges acquired by a county council for the maintenance of improved fenland ways not within an internal drainage district<sup>25</sup>;
- 67 67 (20) control orders in respect of houses<sup>26</sup>;
- 68 68 (21) provisions controlling sales of land and afforestation and conditions applying to amalgamated agricultural units within the area of a rural development board<sup>27</sup>;
- 69 69 (22) certificates given or schemes approved under the Leasehold Reform Act 1967<sup>28</sup>;
- 70 70 (23) estate management schemes approved under the Leasehold Reform, Housing and Urban Development Act 1993<sup>29</sup>;
- 71 71 (24) grants or agreements enforceable under the Civil Aviation Act 1982<sup>30</sup>;

- 72 (25) covenants in agreements as to walkways<sup>31</sup>;
- 73 (26) certain charges in respect of expenses incurred by a council or a highway authority<sup>32</sup>;
- 74 (27) particulars of land retained by a person part of whose land has been acquired for public works<sup>33</sup>;
- 75 (28) agreements as to the use of land near highways<sup>34</sup>;
- 76 (29) particulars deposited of advance payments on account of compensation and other matters<sup>35</sup>;
- 77 (30) acknowledgement payment agreements under the Field Monuments Act 1972 imposing burdens capable of running with the land<sup>36</sup>;
- 78 (31) restrictions imposed under the Covent Garden Market Act 1961<sup>37</sup>;
- 79 (32) storage authorisation orders relating to the storage of gas underground<sup>38</sup>, conditions attached to consents given by the Secretary of State in connection with excavation or other controlled operations in the storage area<sup>39</sup>, further decisions made by the Secretary of State<sup>40</sup> and particulars of compensation agreed or awarded in respect of such a consent<sup>41</sup>;
- 80 (33) resolutions declaring housing action areas<sup>42</sup>, conditions for grants of improvement, repair and conversion<sup>43</sup>, and improvement notices<sup>44</sup>;
- 81 (34) rating surcharges in respect of unoccupied commercial buildings<sup>45</sup>;
- 82 (35) notice of an authority's intention to acquire land under the Community Land Act 1975<sup>46</sup>;
- 83 (36) resolutions declaring that an area is a disposal of notification area under the Community Land Act 1975 (now repealed)<sup>47</sup>;
- 84 (37) orders by the Secretary of State dispensing with the requirements for the disposal of human remains in redundant churches<sup>48</sup>;
- 85 (38) works schemes<sup>49</sup> for the carrying out of coast protection work<sup>50</sup> and schemes for recovery of the costs of maintenance and repair of coastal protection works<sup>51</sup>;
- 86 (39) certain undertakings and agreements between the Corporation of the City of London and owners of legal estates<sup>52</sup>;
- 87 (40) agreements relating to continuance of use arising from a material change of use made or proposed by the Crown in the use of Crown land<sup>53</sup>;
- 88 (41) repair notices, which have become operative, in respect of unfit houses<sup>54</sup> and in respect of houses in a state of disrepair but not unfit<sup>55</sup>;
- 89 (42) notices preliminary to the making of a general vesting declaration<sup>56</sup>;
- 90 (43) orders by the Secretary of State dispensing with the statutory requirements for disposal of human remains interred in land on which buildings are to be erected<sup>57</sup>;
- 91 (44) notifications of sites of special scientific interest<sup>58</sup>; and
- 92 (45) covenants restricting the disposal of dwelling houses in national parks, areas of outstanding national beauty or areas designated as rural areas<sup>59</sup>.

1 For the meaning of 'local land charges' see PARA 672 ante.

2 Ie under the Local Land Charges Act 1975 s 1(1) (as amended) (see PARA 672 ante): see s 1(1)(e); and PARA 672 head (5). For the meaning of 'statutory provision' see PARA 672 note 18 ante.

3 Ie under the Ancient Monuments and Archaeological Areas Act 1979 s 1(1) (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010): see s 1(9).

4 Ie under ibid s 8(2) (as amended), s 8(2A) (as added) (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1021): see s 8(6). As to the payment of compensation for the refusal of scheduled monument consent by the Secretary of State on or after 1 April 1984 see s 7 (as amended); and NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1020.

5 Ie under ibid s 12(1) (as amended), s 12(1A) (as added), s 12(2) (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1028): see s 12(7); and NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1028.

- 6    le under *ibid* s 16(4) (as amended) (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1032): see s 16(8).
- 7    le under *ibid* s 33(1) (as amended) (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1043): see s 33(5).
- 8    le under the New Towns Act 1981 s 1(1) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARAS 1315-1317): see s 1(5) (amended by the New Towns and Urban Development Corporations Act 1985 s 14(2), Sch 4). As to the Part of the register for such charges see PARA 682 post.
- 9    le under *ibid* ss 10, 11 (s 11 as amended) (see TOWN AND COUNTRY PLANNING): see s 12. As to compulsory acquisition see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.
- 10   le lists compiled under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1 and deposited under s 2(1) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARAS 1092, 1094): see s 2(2). As to the Part of the register for such charges see PARA 685 post.
- 11   le under *ibid* s 69(1) (TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1169): see s 69(4).
- 12   le the rights conferred by the Requisitioned Land and War Works Act 1948 s 12(1) and the Land Powers (Defence) Act 1958 s 14 (as amended) (see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 528): see the Requisitioned Land and War Works Act 1948 s 14(1) (amended by the Land Powers (Defence) Act 1958 s 12(2); and the Local Land Charges Act 1975 s 19(1), Schs 1, 2); and the Land Powers (Defence) Act 1958 s 17(1), (1A), (1B) (s 17(1) substituted, and s 17(1A), (1B) added by the Local Land Charges Act 1975 Sch 1). See WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARAS 528-529.
- 13   le under the Civil Aviation Act 1982 ss 43-45, s 46(1) (ss 43, 44 as amended) (see AIR LAW vol 2 (2008) PARA 186 et seq): see s 55(1); and AIR LAW vol 2 (2008) PARA 223. As to the Part of the register for such charges see PARA 683 post.
- 14   le under the Highways Act 1980 s 87 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 520): see s 87(7).
- 15   le under the New Roads and Street Works Act 1991 s 87 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 410 et seq): see s 87(2).
- 16   le under the Underground Works (London) Act 1956 s 6(1): see s 6(9) (substituted by the Local Land Charges Act 1975 Sch 1).
- 17   The conditions are the Hill Farming (Cottages) (England and Wales) Regulations 1954, SI 1954/670 (as amended), made under the Hill Farming Act 1946 s 10 (as amended): see the Hill Farming Act 1954 s 2(1) (amended by the Local Land Charges Act 1975 Sch 1).
- 18   le notices deposited under the Town and Country Planning Act 1990 s 110(2) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 917): see s 110(4).
- 19   le matters under the Highways Act 1980 s 219 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 179 et seq), s 220(1) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 181), s 220(4), (6) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 182-183), ss 221-223 (s 223 as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 179-196): see s 224.
- 20   le compulsory rights orders under the Opencast Coal Act 1958 s 4 (as amended) (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 422 et seq) and compulsory purchase orders conferring rights as to drainage and water supply under s 16 (as amended) (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 421): see s 11(1) (substituted by the Local Land Charges Act 1975 Sch 1); and the Opencast Coal Act 1958 s 16(6) (amended by the Coal Industry Act 1994 s 52, Sch 8 paras 1, 14(8)). As to the Coal Authority see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 52 et seq. As to the Part of the register for such charges see PARA 684 post.
- 21   le under the Weeds Act 1959 s 3(2) (see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1030): see s 3(3) (amended by the Local Land Charges Act 1975 s 19(1), Sch 2).
- 22   le under the Rights of Light Act 1959 s 2(1) (see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARAS 244-245): see s 2(4) (amended by the Local Land Charges Act 1975 Sch 1). As to the Part of the register for such charges see PARA 686 post.
- 23   le under the Housing Act 1985 s 352 (as amended): see s 352(5A) (added by the Local Government and Housing Act 1989 s 169(1)(c), Sch 9 para 49(5)).

- 24    le under the Land Drainage Act 1991 s 18 (as amended) (see WATER AND WATERWAYS vol 101 (2009) PARA 595): see s 18(8). As to the Part of the register for such charges see PARA 687 post.
- 25    le under the Agriculture (Miscellaneous Provisions) Act 1941 s 8(3)(d) (repealed): see s 8(4) (repealed). As to the Part of the register for such charges see PARA 680 post.
- 26    le a control order under the Housing Act 1985 s 379 (as amended): see s 381(5).
- 27    le under the Agriculture Act 1967 Pt III (ss 45-55) (as amended) (see AGRICULTURAL LAND vol 1 (2008) PARA 659 et seq): see s 45(6), Sch 3 para 2(1) (substituted by the Local Land Charges Act 1975 Sch 1).
- 28    le certificates given or schemes approved under the Leasehold Reform Act 1967 s 19(1) (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1503): see s 19(10), (10A) (s 19(10) amended, and s 19(10A) added, by the Local Land Charges Act 1975 Sch 1).
- 29    le schemes approved or applications made under the Leasehold Reform, Housing and Urban Development Act 1993 s 70(1) (as amended) (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1736) before 1 April 1997: see s 70(11). For transitional provisions and savings see the Housing Act 1996 (Commencement No 10 and Transitional Provisions) Order 1997, SI 1997/618, art 2(1), Schedule para 3; and HOUSING vol 22 (2006 Reissue) PARAS 32-33.
- 30    le grants or agreements under the Civil Aviation Act 1982 ss 43-45, 46(1) (ss 43-45 as amended) (see AIR LAW vol 2 (2008) PARA 186 et seq): s 55(1); and AIR LAW vol 2 (2008) PARA 223.
- 31    le agreements made under the Highways Act 1980 s 35 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 688 et seq): see s 35(5).
- 32    le in respect of expenses incurred as mentioned in *ibid* s 305(1) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 923): see s 305(6). As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq; and for the meaning of 'council' for these purposes see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 56.
- 33    le particulars deposited under the Land Compensation Act 1973 s 8(4) (as amended) (see PARA 681 note 3 post): see s 8(4A) (added by the Local Land Charges Act 1975 s 17(2), Sch 1). See also PARA 681 note 3; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 888. As to the Part of the Register for such charges see PARA 681 post.
- 34    le agreements entered into under the Highways Act 1980 s 253(1) (see PARA 681 note 2 post; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 554): see s 253(4).
- 35    le particulars deposited under the Land Compensation Act 1973 s 52(8) (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 656): see s 52(8A) (added by the Local Land Charges Act 1975 s 17(2), Sch 1). As to the Part of the Register for such charges see PARA 681 post.
- 36    le under the Field Monuments Act 1972 s 1, Schedule Pt I para 1 repealed): see Schedule Pt II para 3 (repealed). Notwithstanding the repeal of the Field Monuments Act 1972, these provisions continue to apply in relation to any acknowledgement payment agreement within the meaning of that Act which is in force immediately before 16 July 1979: Ancient Monuments and Archaeological Areas Act 1979 s 64(1), Sch 3 para 7. See NATIONAL CULTURAL HERITAGE.
- 37    le a restriction imposed by the Covent Garden Market Act 1966 s 23 (repealed): see the Covent Garden Market Act 1961 s 48(1) (substituted by the Local Land Charges Act 1975 s 17(2), Sch 1 Pt I); and MARKETS, FAIRS AND STREET TRADING vol 29(2) (Reissue) PARA 1018.
- 38    le storage authorisation orders under the Gas Act 1965 s 4(1) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 983): see s 5(10) (substituted by the Local Land Charges Act 1975 Sch 1). See FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 983.
- 39    le conditions attached to consents under the Gas Act 1965 s 5(2) (as amended), s 5(6) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 995): see s 5(10) (as substituted: see note 38 *supra*). See FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 983.
- 40    le decisions to revoke a consent, to impose conditions or further conditions or to vary any conditions previously imposed, made under *ibid* s 5(8) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 995): see s 5(10) (as substituted: see note 38 *supra*). See FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 983.
- 41    le particulars of compensation paid under *ibid* s 8(2) (as amended) (consent refused or granted subject to conditions: see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1009) or under s 9(2) (as amended) (consent

withdrawn or conditions varied: see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1010); see s 11(3) (amended by the Local Land Charges Act 1975 Sch 1). See FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1009 et seq.

42    Ie under the Housing Act 1985 s 239 (as amended) (see HOUSING vol 22 (2006 Reissue) PARA 599): see s 239(5).

43    Ie under ibid s 505 (repealed): see s 505(3) (repealed). Section 505 is repealed except in relation to any grant application made under s 461 (repealed) which had been approved by the local housing authority before 1 July 1990: see the Local Government and Housing Act 1989 (Commencement No 8 and Transitional Provisions) Order 1990, SI 1990/1274, art 3, Schedule para 2 (art 3 amended by SI 1990/1335).

44    Ie under the Housing Act 1985 s 214(1) (repealed): see s 214(5) (repealed). Section 214 is repealed except in relation to improvement notices served before 1 April 1990: see the Local Government and Housing Act 1989 (Commencement No 5 and Transitional Provisions) Order 1990, SI 1990/431, art 4, Sch 1 para 12. See HOUSING.

45    Ie under the General Rate Act 1967 s 17A (repealed): see s 17B (repealed). Sections 17A, 17B were repealed but the Secretary of State may by order again bring them into force: see the Local Government, Planning and Land Act 1980 s 41(2) (repealed with savings). But see the Local Government Finance, Savings and Consequential Amendments) Order 1990, SI 1990/776; and the General Rate Act 1967 and Related Provisions (Savings and Consequential Provision) Regulations 1990, SI 1990/777. As to rating generally see RATING AND COUNCIL TAX.

46    Ie under the Community Land Act 1975 ss 19, 20, Sch 7 paras 4, 5 (repealed): see Sch 7 para 10(1) (repealed). The Community Land Act 1975 is repealed with savings. For transitional provisions see the Local Government, Planning and Land Act 1980 s 101(1), Sch 17 Pt IV (as amended). As to the Part of the register for charges under the Community Land Act 1975 Sch 7 paras 4, 5 (repealed) see PARA 678 post.

47    Ie under the Community Land Act 1975 ss 23, 24, Sch 8 para 1(1) (repealed): see Sch 8 para 1(2) (repealed). As to the Part of the register for charges under the Community Land Act 1975 s 23 (repealed) see PARA 678 post.

48    Ie under the Pastoral Measure 1983 s 65(3) (see ECCLESIASTICAL LAW): see s 65(5).

49    Ie works schemes prepared by a coast protection authority and confirmed by the minister under the Coast Protection Act 1949 s 6 (see WATER AND WATERWAYS vol 101 (2009) PARAS 524-525): see s 8(8) (substituted by the Local Land Charges Act 1975 Sch 1). A scheme, when operative, is a local land charge as to contributory land in respect of which coast protection charges are to be payable: see s 8(8) (as so substituted). Works schemes under the Coast Protection Act 1949 s 6 have been discontinued (see Ministry of Housing and Local Government Circular 41/62), and all coastal protection works schemes are now carried out under the powers conferred by the Coast Protection Act 1949 ss 4, 5 (s 5 as amended) (see WATER AND WATERWAYS vol 101 (2009) PARAS 512, 519, 523) except where it is necessary to obtain compulsory powers to carry out operations on land which is not in the coast protection authority's ownership.

50    See ibid s 8(8) (as substituted: see note 49 supra). See also WATER AND WATERWAYS vol 101 (2009) PARA 525.

51    Ie schemes under ibid s 13(6) which provides for the provisions of ss 6-8 (s 8 as amended) (see note 49 supra) to apply to any such scheme as they apply to a works scheme: see s 13(6); and WATER AND WATERWAYS vol 101 (2009) PARA 529.

52    Ie undertakings and agreements under the City of London (Various Powers) Act 1960 s 33(1): see s 33(2); the Interpretation Act 1978 s 17(2)(a); and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 72.

53    Ie agreements under the Town and Country Planning Act 1990 s 301(1): see s 301(4); para 689 note 1 post; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 240.

54    Ie notices under the Housing Act 1985 s 189 (as amended): see s 189(5) (added by the Housing Act 1988 s 130(1), Sch 15 para 1(5)). The Housing Act 1985 s 189(5) (as added) does not apply to repair notices served before 15 January 1989.

55    Ie notices under ibid s 190 (as amended): see s 190(5) (added by the Housing Act 1988 Sch 15 para 2(5)). The Housing Act 1985 s 190(5) (as added) does not apply to repair notices served before 15 January 1989.

56    Ie the preliminary notices prescribed by the Compulsory Purchase (Vesting Declarations) Act 1981 s 3: see s 3(4); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 686.

57 The orders under the Disused Burial Grounds (Amendment) Act 1981 s 2(2): see s 2(4); and CREMATION AND BURIAL vol 10 (Reissue) PARA 1153.

58 The notifications under the Wildlife and Countryside Act 1981 s 28(1) (as substituted): see s 28 (9) (substituted by the Countryside and Rights of Way Act 2000 s 75(1), Sch 9 para 1). These provisions replace the Wildlife and Countryside Act 1981 s 28(1), (11) (as originally enacted). As to sites or areas of special scientific interest see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 674.

59 The covenants under the Housing Act 1985 s 37(1) (as amended) (see HOUSING vol 22 (2006 Reissue) PARA 313): see s 37(5) (amended by the Land Registration Act 2002 s 133, Sch 11 para 18(1), (2)).

## **UPDATE**

### **672-674 Meaning of 'local land charges' ... Local land charges under statutory provision**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **674 Local land charges under statutory provision**

TEXT AND NOTES--Also, heads (46) a remedial notice issued pursuant to a complaint about a high hedge (see the Anti-social Behaviour Act 2003 s 69 and NUISANCE vol 78 (2010) PARA 133); and (47) expenses recoverable under s 77 (see s 77(3) and NUISANCE vol 78 (2010) PARA 137).

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.



Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/675. Register and index.

## **(2) THE REGISTER AND INDEX**

### **675. Register and index.**

There must continue to be kept for the area of each registering authority<sup>1</sup>: (1) a local land charges<sup>2</sup> register<sup>3</sup>; and (2) an index by which all entries made in the register can readily be traced<sup>4</sup>, and as from 1 August 1977<sup>5</sup> the register and index kept for the area of a registering authority must be kept by that authority<sup>6</sup>. Neither a local land charges register nor an index need be kept in documentary form<sup>7</sup>. The local land charges register is divided into 12 parts<sup>8</sup>. Every charge<sup>9</sup> must be registered by reference to the land<sup>10</sup> in the area of the registering authority affected by the charge, in such a manner as to show the situation and extent of that land<sup>11</sup>. Where the particulars of a planning charge<sup>12</sup> or other charge which are required to be entered in the local land charges register have been entered in another record maintained and kept open for public inspection in pursuance of a statutory obligation, it is sufficient compliance with that requirement to enter in the local land charges register a reference by which the particulars in that other record can readily be traced<sup>13</sup>.

1 As to what are registering authorities see PARA 688 post.

2 For the meaning of 'local land charges' see PARA 672 ante. See also PARA 674 ante.

3 Local Land Charges Act 1975 s 3(2)(a).

4 Ibid s 3(2)(b).

5 Ie the date of commencement of the Local Land Charges Act 1975: see PARA 615 text and note 3 ante.

6 Ibid s 3(2).

7 Ibid s 3(3) (substituted by the Local Government (Miscellaneous Provisions) Act 1982 s 34(a)).

8 Local Land Charges Rules 1977, SI 1977/985, r 3. As to the contents of the several parts of the register see PARAS 676-687 post.

9 'Charge' means a local land charge or a matter which is registrable in a local land charges register: ibid r 2(2).

10 As to the meaning of 'land' see PARA 672 note 2 ante.

11 Local Land Charges Rules 1977, SI 1977/985, r 6(1).

12 For the meaning of 'planning charge' see PARA 678 post.

13 Local Land Charges Rules 1977, SI 1977/985, r 7.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/676. Part 1 of the register.

### 676. Part 1 of the register.

Part 1 of the register<sup>1</sup> relates to general financial charges<sup>2</sup>. 'General financial charge' means a general charge against land<sup>3</sup> for local authorities' expenditure<sup>4</sup> or a scheme for coast protection works<sup>5</sup>, which does not specify the persons by whom coast protection charges are to be paid<sup>6</sup>.

Entries in Part 1 must contain a description<sup>7</sup> of the general financial charge, the identity of the originating authority<sup>8</sup> and the date of registration of the charge<sup>9</sup>.

1 'Register' means local land charges register: Local Land Charges Rules 1977, SI 1977/985, r 2(2). As to the register and index see PARA 675 ante.

2 Ibid r 3.

3 As to the meaning of 'land' see PARA 672 note 2 ante.

4 Ie a charge under the Local Land Charges Act 1975 s 6(2) (see PARA 690 post): see the Local Land Charges Rules 1977, SI 1977/985, r 2(2).

5 Ie under the Coast Protection Act 1949 s 8(8) (as substituted) or s 13(6) (see PARA 674 text and notes 49-51 ante): see the Local Land Charges Rules 1977, SI 1977/985, r 2(2).

6 Ibid r 2(2).

7 'Description', in relation to a charge, means a description which is sufficient to indicate: (1) the nature of any agreement, certificate, notice, order, resolution, scheme or other instrument or document (not being a statute or an instrument embodying statutory provisions) which comprises the charge or in connection with which the charge came into existence; (2) where apparent from the instrument or document, the date on which the charge came into existence; and (3) any statutory provision (other than the Local Land Charges Act 1975 s 1(1)(e) or a provision specified in that part of the Local Land Charges Rules 1977, SI 1977/985, r 6(2), Sch 2 appropriate for the charge) under or by virtue of which the charge is a local land charge or registrable, or which comprises the charge: r 2(2). For the meaning of 'charge' see PARA 675 note 9 ante. For the meaning of 'statutory provision' see PARA 672 note 18 ante.

8 'Originating authority', as respects a charge, means the authority or person who, under the Local Land Charges Act 1975 s 5(4) (see PARA 689 note 1 post) or, as the case may be, some other statutory provision, is the originating authority for the purposes of the Act: Land Charges Rules 1977, SI 1977/985, r 2(2).

9 See ibid Sch 2 Pt 1. As to the identification of the land affected and the use of existing records see rr 6(1), 7; and PARA 675 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/677. Part 2 of the register.

### **677. Part 2 of the register.**

Part 2 of the register<sup>1</sup> relates to specific financial charges<sup>2</sup>. 'Specific financial charge' means a charge<sup>3</sup> acquired by a local authority<sup>4</sup> or national park authority<sup>5</sup>, water authority<sup>6</sup>, sewerage undertaker<sup>7</sup> or new town development corporation<sup>8</sup> under specified enactments, which is binding on successive owners of the land affected<sup>9</sup>, or a scheme for coast protection works<sup>10</sup> which specifies the persons by whom coast protection charges are to be paid<sup>11</sup>.

Entries in Part 2 must contain: (1) a description<sup>12</sup> of the specific financial charge, including reference to the appropriate statutory provision<sup>13</sup>; (2) the identity of the originating authority<sup>14</sup>; (3) the amount originally secured by the charge and the rate of interest, if any, payable; (4) the date of the last payment and the balance of the charge then outstanding; (5) the place where the relevant documents<sup>15</sup> may be inspected; and (6) the date of registration of the charge<sup>16</sup>.

1 For the meaning of 'register' see PARA 676 note 1 ante. As to the register and index see PARA 675 ante.

2 Local Land Charges Rules 1977, SI 1977/985, r 3.

3 For the meaning of 'charge' see PARA 675 note 9 ante.

4 As to local authorities see PARA 672 note 5 ante.

5 As to national park authorities see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 526 et seq.

6 As to water authorities see PARA 672 note 7 ante.

7 As to sewerage undertakers see PARA 672 note 8 ante.

8 As to new town development corporations see PARA 672 note 9 ante.

9 I.e. under the Local Land Charges Act 1975 s 1(1)(a) (as amended) (see PARA 672 note 11 ante): see the Local Land Charges Rules 1977, SI 1977/985, r 2(2). As to the effect of local charges of this type when registered see the Local Land Charges Act 1975 s 7; and PARA 693 post. As to the meaning of 'land' see PARA 672 note 2 ante.

10 I.e. under the Coast Protection Act 1949 s 8(8) (as substituted) or s 13(6) (see PARA 674 text and notes 49-51 ante): see the Local Land Charges Rules 1977, SI 1977/985, r 2(2).

11 Ibid r 2(2).

12 For the meaning of 'description' see PARA 676 note 7 ante.

13 For the meaning of 'statutory provision' see PARA 672 note 18 ante.

14 For the meaning of 'originating authority' see PARA 676 note 8 ante.

15 'Relevant document' means a document (other than a public general statute), map or plan in the absence of which the nature and effect of a charge cannot readily be understood, or a copy of that document, map or plan, and includes any document filed in accordance with the Local Land Charges Rules 1977, SI 1977/985: r 2(2).

16 Ibid r 6(2), Sch 2 Pt 2. As to the use of existing records see r 7; and PARA 675 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/678. Part 3 of the register.

### 678. Part 3 of the register.

Part 3 of the register<sup>1</sup> relates to planning charges<sup>2</sup>. 'Planning charge' means a charge<sup>3</sup> which is: (1) a prohibition of, or restriction or condition on, the use of land<sup>4</sup> having effect under the town and country planning provisions<sup>5</sup>; (2) a notice of apportionment of compensation<sup>6</sup>; (3) a resolution declaring a disposal notification area<sup>7</sup>; or (4) a notice of intention to acquire land compulsorily<sup>8</sup>.

Every type of entry in Part 3, excluding head (2) above, must contain: (a) a description<sup>9</sup> of the charge, including reference to the appropriate statutory provision<sup>10</sup>; (b) the identity of the originating authority<sup>11</sup>; (c) the place where the relevant documents<sup>12</sup> may be inspected; and (d) the date of registration of the charge<sup>13</sup>.

1 For the meaning of 'register' see PARA 676 note 1 ante. As to the register and index see PARA 675 ante.

2 Local Land Charges Rules 1977, SI 1977/985, r 3.

3 I.e. a charge not falling within the Planning (Listed Buildings and Conservation Areas) Act 1990 s 2(2) (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1094): see the Local Land Charges Rules 1977, SI 1977/985, r 2(2); and the Interpretation Act 1978 s 17(2)(a).

4 As to the meaning of 'land' see PARA 672 note 2 ante.

5 I.e. the Town and Country Planning Act 1971, the Community Land Act 1975 or any other statutory provision relating to town and country planning: see the Local Land Charges Rules 1977, SI 1977/985, r 2(2). The Town and Country Planning Act 1971 was repealed and consolidated in the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, and the Planning (Hazardous Substances) Act 1990 (see TOWN AND COUNTRY PLANNING). The Community Land Act 1975 is repealed with savings. For transitional provisions see the Local Government, Planning and Land Act 1980 s 101(1), Sch 17 Pt IV (as amended).

6 The Local Land Charges Rules 1977, SI 1977/985, r 2(2) refers to the Town and Country Planning Act 1971 s 158, which was replaced by the Town and Country Planning Act 1990 s 132 (repealed in relation to any compensation unless the claim was made before 25 September 1991) (see note 5 supra): see the Local Land Charges Rules 1977, SI 1977/985, r 2(2); and the Interpretation Act 1978 s 17(2)(a). As to the particulars of registration required under head (2) in the text see the Local Land Charges Rules 1977, SI 1977/985, r 6(2), Sch 2 Pt 3 para (a).

7 Ibid r 2(2) refers to the Community Land Act 1975 s 23(2), but this has been repealed (see note 5 supra; and PARA 674 head (36) ante).

8 See the Local Land Charges Rules 1977, SI 1977/985, r 2(2). Rule 2(2) refers to the Community Land Act 1975 Sch 7 paras 4, 5, but these provisions have been repealed (see note 5 supra; and 674 head (35) ante). As to the compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

9 For the meaning of 'description' see PARA 676 note 7 ante.

10 For the meaning of 'statutory provision' see PARA 672 note 18 ante.

11 For the meaning of 'originating authority' see PARA 676 note 8 ante.

12 For the meaning of 'relevant document' see PARA 677 note 15 ante.

13 Local Land Charges Rules 1977, SI 1977/985, Sch 2 Pt 3 para (b).

### UPDATE

### 678 Part 3 of the register

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/679. Part 4 of the register.

**679. Part 4 of the register.**

Part 4 of the register<sup>1</sup> relates to the charges<sup>2</sup> not registrable in another part of the register<sup>3</sup>.

Entries in Part 4 must contain: (1) a description<sup>4</sup> of the charge, including a reference to the appropriate statutory provision<sup>5</sup>; (2) the identity of the originating authority<sup>6</sup>; (3) the place where the relevant documents<sup>7</sup> may be inspected; and (4) the date of registration of the charge<sup>8</sup>.

1 For the meaning of 'register' see PARA 676 note 1 ante. As to the register and index see PARA 675 ante.

2 For the meaning of 'charge' see PARA 675 note 9 ante.

3 Is known as 'miscellaneous charges': Local Land Charges Rules 1977, SI 1977/985, r 3. As to matters which have been made local land charges by statutory provision see PARA 674 ante.

4 For the meaning of 'description' see PARA 676 note 7 ante.

5 For the meaning of 'statutory provision' see PARA 672 note 18 ante.

6 For the meaning of 'originating authority' see PARA 676 note 8 ante.

7 For the meaning of 'relevant document' see PARA 677 note 15 ante.

8 Local Land Charges Rules 1977, SI 1977/985, r 6(2), Sch 2 Pt 4.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/680. Part 5 of the register.

### **680. Part 5 of the register.**

Part 5 of the register<sup>1</sup> relates to fenland ways maintenance charges, which are charges<sup>2</sup> acquired by a county council<sup>3</sup> for the maintenance of improved fenland ways where the ways are not within an internal drainage district<sup>4</sup>.

Entries in Part 5 must contain: (1) a description<sup>5</sup> of the fenland ways maintenance charge, including a reference to the specified certificate<sup>6</sup>; (2) the identity of the originating authority<sup>7</sup>; (3) the proportion of the total expense of works for which the originating authority is entitled to the charge; (4) the sums from time to time secured by the charge; (5) the date of the last payment and the balance of the charge then outstanding; (6) the place where the relevant documents<sup>8</sup> may be inspected; and (7) the date of registration of the charge<sup>9</sup>.

1 For the meaning of 'register' see PARA 676 note 1 ante. As to the register and index see PARA 675 ante.

2 For the meaning of 'charge' see PARA 675 note 9 ante.

3 Ie under the Agriculture (Miscellaneous Provisions) Act 1941 s 8(3)(d) (repealed). These charges were local land charges by virtue of s 8(4) (repealed): see PARA 674 head (19) ante.

4 Local Land Charges Rules 1977, SI 1977/985, r 3.

5 For the meaning of 'description' see PARA 676 note 7 ante.

6 Ie the certificate under the Agriculture (Miscellaneous Provisions) Act 1941 s 8(3)(d) (repealed) (see note 3 supra).

7 For the meaning of 'originating authority' see PARA 676 note 8 ante.

8 For the meaning of 'relevant document' see PARA 677 note 15 ante.

9 Local Land Charges Rules 1977, SI 1977/985, r 6(2), Sch 2 Pt 5.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/681. Part 6 of the register.

### **681. Part 6 of the register.**

Part 6 of the register<sup>1</sup> relates to land compensation charges<sup>2</sup>, being either particulars of land retained by a person part of whose land has been acquired for public works<sup>3</sup> or particulars of advance payments on account of compensation on compulsory acquisition<sup>4</sup>, in either case deposited with the local authority.

Entries in Part 6 relating to particulars of land retained must contain: (1) a description<sup>5</sup> of the charge<sup>6</sup>; (2) the identity of the originating authority<sup>7</sup>; (3) a description of the retained land; (4) particulars of the nature and extent of the works relating to the acquired land; (5) the place where the relevant documents<sup>8</sup> may be inspected; and (6) the date of the registration of the charge<sup>9</sup>. In the case of particulars of advance payments, the entries must contain: (a) a description of the charge; (b) the identity of the originating authority; (c) particulars of the relevant interest in the land; (d) particulars of the advance payment and the agreed or estimated compensation<sup>10</sup>; (e) the place where the relevant documents may be inspected; and (f) the date of registration of the charge<sup>11</sup>.

1 For the meaning of 'register' see PARA 676 note 1 ante. As to the register and index see PARA 675 ante.

2 Local Land Charges Rules 1977, SI 1977/985, r 3.

3 Ie under the Land Compensation Act 1973 s 8(4) (as amended) (see PARA 674 head (27) ante; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 888): see the Local Land Charges Rules 1977, SI 1977/985, r 3. As to the meaning of 'land' see PARA 672 note 2 ante.

4 Ie under the Land Compensation Act 1973 s 52(8) (as amended) (see PARA 674 head (29); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 656): see the Local Land Charges Rules 1977, SI 1977/985, r 3.

5 For the meaning of 'description' see PARA 676 note 7 ante.

6 For the meaning of 'charge' see PARA 675 note 9 ante.

7 For the meaning of 'originating authority' see PARA 676 note 8 ante.

8 For the meaning of 'relevant document' see PARA 677 note 15 ante.

9 Local Land Charges Rules 1977, SI 1977/985, r 6(2), Sch 2 Pt 6 para (a).

10 As to compensation see the Land Compensation Act 1973 s 52(3); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 652-655.

11 Local Land Charges Rules 1977, SI 1977/985, Sch 2 Pt 6 para (b).



Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/682. Part 7 of the register.

## **682. Part 7 of the register.**

Part 7 of the register<sup>1</sup> relates to new towns charges<sup>2</sup>, being either compulsory purchase orders made under the New Towns Act 1981<sup>3</sup> or orders designating the sites of new towns<sup>4</sup> made under that Act<sup>5</sup>.

Entries in Part 7 must contain: (1) a description<sup>6</sup> of the charge; (2) the identity of the originating authority<sup>7</sup>; (3) the place where the relevant documents<sup>8</sup> may be inspected; and (4) the date of registration of the charge<sup>9</sup>.

1 For the meaning of 'register' see PARA 676 note 1 ante. As to the register and index see PARA 675 ante.

2 The Local Land Charges Rules 1977, SI 1977/985, r 3 refers to the New Towns Act 1965 ss 1(4), 9, but these provisions have been repealed: see now the New Towns Act 1981 s 1(5) (as amended), s 12; para 674 head (3) ante; and TOWN AND COUNTRY PLANNING. For the meaning of 'charge' see PARA 675 note 9 ante.

3 The Local Land Charges Rules 1977, SI 1977/985, r 3 refers to the New Towns Act 1965 ss 7, 8, but these provisions have been repealed: see now the New Towns Act 1981 ss 10, 11 (s 11 as amended); para 674 head (3) ante; and TOWN AND COUNTRY PLANNING.

4 The Local Land Charges Rules 1977, SI 1977/985, r 3 refers to the New Towns Act 1965 s 1, but this has been repealed: see now the New Towns Act 1981 s 1 (as amended); and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARAS 1315-1317.

5 Local Land Charges Rules 1977, SI 1977/985, r 3; Interpretation Act 1978 s 17(2)(a).

6 For the meaning of 'description' see PARA 676 note 7 ante.

7 For the meaning of 'originating authority' see PARA 676 note 8 ante.

8 For the meaning of 'relevant document' see PARA 677 note 15 ante.

9 Local Land Charges Rules 1977, SI 1977/985, r 6(2), Sch 2 Pt 7.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/683. Part 8 of the register.

**683. Part 8 of the register.**

Part 8 of the register<sup>1</sup> relates to civil aviation charges<sup>2</sup>, being orders or directions, grants or agreements registrable under the Civil Aviation Act 1982<sup>3</sup>.

Entries in Part 8 must contain: (1) a description<sup>4</sup> of the charge; (2) the identity of the originating authority<sup>5</sup>; (3) the place where the relevant documents<sup>6</sup> may be inspected; and (4) the date of registration of the charge<sup>7</sup>.

1 For the meaning of 'register' see PARA 676 note 1 ante. As to the register and index see PARA 675 ante.

2 The Local Land Charges Rules 1977, SI 1977/985, r 3 refers to the Civil Aviation Act 1949 s 33, the Civil Aviation Act 1968 s 21, and the Civil Aviation Act 1971 s 16(2) (all repealed). Civil aviation charges now fall within the Civil Aviation Act 1982 ss 43-46 (ss 43, 44, 46 as amended): see PARA 674 head (7) ante; and AIR LAW vol 2 (2008) PARA 186 et seq. For the meaning of 'charge' see PARA 675 note 9 ante.

3 Local Land Charges Rules 1977, SI 1977/985, r 3; Interpretation Act 1978 s 17(2)(a). See note 2 supra.

4 For the meaning of 'description' see PARA 676 note 7 ante.

5 For the meaning of 'originating authority' see PARA 676 note 8 ante.

6 For the meaning of 'relevant document' see PARA 677 note 15 ante.

7 Local Land Charges Rules 1977, SI 1977/985, r 6(2), Sch 2 Pt 8.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/684. Part 9 of the register.

**684. Part 9 of the register.**

Part 9 of the register<sup>1</sup> relates to opencast coal charges<sup>2</sup>, being compulsory rights orders and compulsory purchase orders under the Opencast Coal Act 1958<sup>3</sup>.

Entries in Part 9 must contain: (1) a description<sup>4</sup> of the charge; (2) the identity of the originating authority<sup>5</sup>; (3) the place where the relevant documents<sup>6</sup> may be inspected; and (4) the date of registration of the charge<sup>7</sup>.

1 For the meaning of 'register' see PARA 676 note 1 ante. As to the register and index see PARA 675 ante.

2 See under the Opencast Coal Act 1958 s 11(1) (as substituted) (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 422) or s 16(6) (as amended) (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 421); see PARA 674 head (14) ante. For the meaning of 'charge' see PARA 675 note 9 ante.

3 Local Land Charges Rules 1977, SI 1977/985, r 3.

4 For the meaning of 'description' see PARA 676 note 7 ante.

5 For the meaning of 'originating authority' see PARA 676 note 8 ante.

6 For the meaning of 'relevant document' see PARA 677 note 15 ante.

7 Local Land Charges Rules 1977, SI 1977/985, r 6(2), Sch 2 Pt 9.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/685. Part 10 of the register.

### **685. Part 10 of the register.**

Part 10 of the register<sup>1</sup> relates to listed buildings charges<sup>2</sup>, being the lists of buildings of special architectural or historic interest compiled or approved under the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>3</sup>.

Entries in Part 10 must contain: (1) a description<sup>4</sup> of the charge; (2) the identity of the originating authority<sup>5</sup>; (3) the place where the relevant documents<sup>6</sup> may be inspected; and (4) the date of registration of the charge<sup>7</sup>.

1 For the meaning of 'register' see PARA 676 note 1 ante. As to the register and index see PARA 675 ante.

2 The Local Land Charges Rules 1977, SI 1977/985, r 3 refers to the Town and Country Planning Act 1971 s 54(6), but this has been repealed: see now the Planning (Listed Buildings and Conservation Areas) Act 1990 s 2(2); para 674 head (4) ante; and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1094. For the meaning of 'charge' see PARA 675 note 9 ante.

3 Local Land Charges Rules 1977, SI 1977/985, r 3; Interpretation Act 1978 s 17(2)(a).

4 For the meaning of 'description' see PARA 676 note 7 ante.

5 For the meaning of 'originating authority' see PARA 676 note 8 ante. In relation to a listed buildings charge, the council with whom a copy of the list of buildings is deposited is to be treated for the purposes of the Local Land Charges Act 1975 as the originating authority as respects the charge constituted by the deposit: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 2(2).

6 For the meaning of 'relevant document' see PARA 677 note 15 ante.

7 Local Land Charges Rules 1977, SI 1977/985, r 6(2), Sch 2 Pt 10.

### **UPDATE**

### **685 Part 10 of the register**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/686. Part 11 of the register.

### **686. Part 11 of the register.**

Part 11 of the register<sup>1</sup> relates to light obstruction notices<sup>2</sup>, being notices registered under the Rights of Light Act 1959<sup>3</sup>. The rule that failure to register a local land charge in the appropriate register does not affect its enforceability<sup>4</sup>, and the provisions for compensation for loss resulting from failure to register or to disclose the existence of a local land charge<sup>5</sup>, do not apply to light obstruction charges<sup>6</sup>.

Entries in Part 11 must contain: (1) a description<sup>7</sup> of the charge<sup>8</sup>; (2) a description of the dominant building; (3) the applicant's name and address and a short description of his interest in the servient land; (4) the position and dimension of the structure to which the registration is equivalent; (5) the date of the temporary Lands Tribunal certificate<sup>9</sup>, if any, and of its expiration; (6) the date of the definitive Lands Tribunal certificate<sup>10</sup>; (7) a list of documents filed<sup>11</sup>; and (8) the date of registration of the charge<sup>12</sup>.

1 For the meaning of 'register' see PARA 676 note 1 ante. As to the register and index see PARA 675 ante.

2 The charges falling within the Rights of Light Act 1959 s 2(4) (as amended): see PARAS 674 head (16) ante, 691 post; and EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 244.

3 Local Land Charges Rules 1977, SI 1977/985, r 3.

4 The rule under the Local Land Charges Act 1975 s 5(1), (2): see PARA 689 post.

5 The rule under ibid s 10 (as amended): see PARA 694 post.

6 Rights of Light Act 1959 s 2(4)(b) (amended by the Local Land Charges Act 1975 s 17(2), Sch 1).

7 For the meaning of 'description' see PARA 676 note 7 ante.

8 For the meaning of 'charge' see PARA 675 note 9 ante.

9 See the Rights of Light Act 1959 s 2(3)(b); and EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 244. As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

10 See ibid s 2(3)(a).

11 As to the documents to be filed on the registration of a light obstruction notice see the Local Land Charges Rules 1977, SI 1977/985, r 10; and PARA 691 post.

12 Ibid r 6(2), Sch 2 Pt 11. As to the special provisions governing the registration of light obstruction notices see PARA 691 post. See further EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 244.

### **UPDATE**

### **686 Part 11 of the register**

TEXT AND NOTES 9, 12--References to the Lands Tribunal are now to the Upper Tribunal: SI 1977/985 Sch 2 Pt 11 (amended by SI 2009/1307).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(2) THE REGISTER AND INDEX/687. Part 12 of the register.

**687. Part 12 of the register.**

Part 12 of the register<sup>1</sup> relates to drainage scheme charges<sup>2</sup>, being land drainage schemes under the Land Drainage Act 1991<sup>3</sup>.

Entries in Part 12 must contain: (1) a description<sup>4</sup> of the charge; (2) the identity of the originating authority<sup>5</sup>; (3) the place where the relevant documents<sup>6</sup> may be inspected; and (4) the date of registration of the charge<sup>7</sup>.

1 For the meaning of 'register' see PARA 676 note 1 ante. As to the register and index see PARA 675 ante.

2 The Local Land Charges Rules 1977, SI 1977/985, r 3 refers to the Land Drainage Act 1976 s 31(4), but this has been repealed: see now the Land Drainage Act 1991 s 18(8); para 674 head (18) ante; WATER AND WATERWAYS vol 101 (2009) PARA 595. For the meaning of 'charge' see PARA 675 note 9 ante.

3 Local Land Charges Rules 1977, SI 1977/985, r 3; Interpretation Act 1978 s 17(2)(a). See note 2 supra.

4 For the meaning of 'description' see PARA 676 note 7 ante.

5 For the meaning of 'originating authority' see PARA 676 note 8 ante.

6 For the meaning of 'relevant document' see PARA 677 note 15 ante.

7 Local Land Charges Rules 1977, SI 1977/985, r 6(2), Sch 2 Pt 12.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(3) EFFECTING REGISTRATION/688. Registering authorities.

### **(3) EFFECTING REGISTRATION**

#### **688. Registering authorities.**

The local land charges register and index kept for the area of a registering authority must be kept by that authority<sup>1</sup>. The council of any district, a Welsh county council, a county borough council, the council of any London borough, and the Common Council of the City of London<sup>2</sup> are registering authorities<sup>3</sup>.

1 See the Local Land Charges Act 1975 s 3(2); and PARA 675 ante.

2 For these purposes, the area of the Common Council of the City of London includes the Inner Temple and the Middle Temple: *ibid* s 3(4). As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

3 *Ibid* s 3(1) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 49). In relation to any land or to a local land charge, 'the registering authority' means the registering authority in whose area the land or, as the case may be, the land affected by the charge, is situated, or, if the land in question is situated in the areas of two or more registering authorities, each of those authorities respectively: Local Land Charges Act 1975 s 16(1). As to the meaning of 'land' see PARA 672 note 2 ante. For the meaning of 'local land charges' see PARA 672 ante. As to local government areas and authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(3) EFFECTING REGISTRATION/689. Registration.

### 689. Registration.

Where the originating authority<sup>1</sup> as respects a local land charge is the registering authority<sup>2</sup>, it is its duty to register the charge in the appropriate local land charges register<sup>3</sup>. Where the originating authority is not the registering authority, it is the originating authority's duty to apply to the registering authority for its registration in the appropriate local land charges register and upon that application being made the registering authority must register the charge accordingly<sup>4</sup>. The registration in a local land charges register of a local land charge, or of any matter which when registered becomes a local land charge, must be carried out by reference to the land affected or such part of it as is situated in the area for which the register is kept<sup>5</sup>. Registration may be cancelled pursuant to a court order<sup>6</sup>.

1 As respects a local land charge, 'the originating authority' means the Minister of the Crown, government department, local authority or other person by whom the charge is brought into existence or by whom, on its coming into existence, the charge is enforceable: Local Land Charges Act 1975 ss 5(4), 16(1). For this purpose: (1) where a matter that is a local land charge consists of or is embodied in, or is otherwise given effect by, an order, scheme or other instrument made or confirmed by a Minister of the Crown or government department, then, on the application of another authority, the charge must be treated as brought into existence by that other authority (s 5(4)(a)); and (2) a local land charge brought into existence by a Minister of the Crown or government department on an appeal from a decision or determination of another authority, or in exercise of powers ordinarily exercisable by another authority, must be treated as brought into existence by that other authority (s 5(4)(b)). For the meaning of 'local land charges' see PARA 672 ante. In relation to an agreement under the Town and Country Planning Act 1990 s 301 (continuance of use arising from a material change of use made or proposed by the Crown in the use of Crown land) (see PARA 674 head (40) ante), the local planning authority by which an agreement is made is treated as the originating authority: see s 301(4); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 240.

2 As to what are registering authorities see PARA 688 ante.

3 Local Land Charges Act 1975 s 5(1). In relation to any land or to a local land charge, 'the appropriate local land charges register' means the local land charges register for the area in which the land or, as the case may be, the land affected by the charge is situated or, if the land in question is situated in two or more areas for which local land charges registers are kept, each of the local land charges registers kept for those areas respectively: s 4 (amended by the Interpretation Act 1978 s 25(1), Sch 3). As to the meaning of 'land' see PARA 672 note 2 ante. As to transitional provisions see the Local Land Charges Act 1975 s 5(6); and PARA 671 note 2 ante. As to the effect of registration of local land charges see PARA 693 post.

4 Ibid s 5(2). An application to a registering authority for registration of a charge must be in writing and must contain a description of the charge and any other particulars necessary to enable the registering authority to register the charge in accordance with the Local Land Charges Rules 1977, SI 1977/985: r 4(1). Applications for registration may be sent by post to, or left at the office of, the registering authority: r 4(2). For the meaning of 'charge' see PARA 675 note 9 ante. For the meaning of 'description' see PARA 676 note 7 ante. Special provisions apply in the case of applications to register light obstruction notices under the Rights of Light Act 1959: see PARA 691 post. The Local Land Charges Rules 1977, SI 1977/985, made transitional provision, so that an application or requisition sent to the registering authority before 1 August 1977, but not dealt with by that date, was to be treated as an application or requisition under them and to be dealt with by the registering authority accordingly, if it could have been made under the rules if they had been in force (see r 15(1)); and provided for forms prescribed by rules relating to charges which were applicable on 31 July 1977 to be used, with appropriate adaptations, for the purposes of the Local Land Charges Rules 1977, SI 1977/985, until the Lord Chancellor should otherwise direct: r 15(3). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Local Land Charges Act 1975 s 5(3). As to effecting registration of a charge see the Local Land Charges Rules 1977, SI 1977/985, rr 6, 7, Sch 2; and PARAS 675-687 ante. As to registrations subsisting on 31 July 1977, registering authorities are not bound to register or disclose by an official certificate of search or otherwise any particulars the registration or disclosure of which could not be required by or under the rules applicable on that date to those registrations: r 15(2). As to official certificates of search see PARA 705 post.



6 Local Land Charges Act 1975 s 5(5). 'The court' means the High Court, or the county court in a case where the county court has jurisdiction: s 16(1). As to cancellation generally see PARA 695 post.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(3) EFFECTING REGISTRATION/690. Local authority's right to register a general charge against land.

### **690. Local authority's right to register a general charge against land.**

Special provisions apply where a local authority has incurred any expenditure in respect of which, when any relevant work is completed and any requisite resolution is passed or order is made, there will arise in its favour a specific charge capable of being registered as a local land charge<sup>1</sup>. At any time before the specific charge comes into existence, a general charge<sup>2</sup> against the land<sup>3</sup>, without any amount being specified, may be registered in the appropriate local land charges register<sup>4</sup> by the registering authority<sup>5</sup> if it is the originating authority<sup>6</sup> and, if it is not, must be registered in it by the registering authority if the originating authority makes an application for that purpose<sup>7</sup>. A general charge registered under these provisions is a local land charge<sup>8</sup>. If a general charge is registered pursuant to an application by the originating authority, the authority must, when the specific charge comes into existence, notify the registering authority of that fact, and any such notification must be treated as an application for the cancellation of the general charge and the registration of a specific charge<sup>9</sup>. Where a general charge is registered, its registration must be cancelled within the prescribed period<sup>10</sup>, and the specific charge may not be registered before the general charge is cancelled<sup>11</sup>.

1 Local Land Charges Act 1975 s 6(1). For the meaning of 'local authority' see PARA 672 note 5 ante. For the meaning of 'local land charges' see PARA 672 ante.

2 General financial charges must be registered in Pt 1 of the register: see the Local Land Charges Rules 1977, SI 1977/985, r 3; and PARA 676 ante.

3 As to the meaning of 'land' see PARA 672 note 2 ante.

4 For the meaning of 'the appropriate local land charges register' see PARA 689 note 3 ante.

5 As to what are registering authorities see PARA 688 ante.

6 For the meaning of 'the originating authority' see PARA 689 note 1 ante.

7 Local Land Charges Act 1975 s 6(2).

8 Ibid s 6(3). The provisions of s 5(1), (2) (see PARA 689 ante) do not apply to a general charge: see s 6(3).

9 Ibid s 6(4). This is subject to s 6(5): see the text and notes 10-11 infra.

10 The prescribed period is 15 months from the day on which the specific charge comes into existence: Local Land Charges Rules 1977, SI 1977/985, r 9.

11 Local Land Charges Act 1975 s 6(5). If the registration of the general charge is duly cancelled within the prescribed period and the specific charge is registered immediately upon the cancellation or was discharged before the cancellation, the specific charge is treated as coming into existence for the purposes of the compensation provisions of s 10 (as amended) (see PARA 694 post) when the general charge was cancelled: s 6(6).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(3) EFFECTING REGISTRATION/691. Special provisions as to the registration of light obstruction notices.

### **691. Special provisions as to the registration of light obstruction notices.**

An application for the registration of a light obstruction notice<sup>1</sup> must be in the prescribed form<sup>2</sup> and be accompanied by the certificate of the Lands Tribunal<sup>3</sup> relating to the notice<sup>4</sup>. On receiving the application and the certificate, the registering authority<sup>5</sup> must file them and register the notice<sup>6</sup>. Where, after a temporary certificate<sup>7</sup> of the Lands Tribunal has been filed and before the period for which it operates has expired, a definitive certificate<sup>8</sup> is lodged with the registering authority, the authority must file the definitive certificate with the application for registration of the notice and amend the registration accordingly<sup>9</sup>.

On receiving an office copy of a judgment or order directing the registration of a light obstruction notice to be varied or cancelled, the registering authority must file the office copy with the application for registration of the notice and amend or cancel the registration accordingly<sup>10</sup>. The person on whose application the notice was registered, or any owner<sup>11</sup> of the servient land<sup>12</sup> or part of it who is a successor in title to that person, may within a year from the date of registration apply in the prescribed form<sup>13</sup> for: (1) amendment of the registered particulars of the position or dimensions of the structure to which registration is intended to be equivalent, so as to reduce its height or length or to increase its distance from the dominant building<sup>14</sup>; or (2) cancellation of the registration<sup>15</sup>. On receiving any such application the registering authority must file it and amend or cancel the registration accordingly<sup>16</sup>. The registering authority must cancel the registration of a light obstruction notice: (a) where in relation to the notice a temporary certificate of the Lands Tribunal has been filed and no definitive certificate has been filed, on the expiration of the period of operation specified in the temporary certificate<sup>17</sup>; or (b) in any other case, on the expiration of 21 years from the date of registration<sup>18</sup>. Any filed document relating to the notice must then be taken off the file<sup>19</sup>.

1    Ie an application under the Rights of Light Act 1959 s 2(2) (see PARA 686 ante).

2    As to the prescribed form see the Local Land Charges Rules 1977, SI 1977/985, r 10(1), Sch 1 Form A. No forms other than those supplied by Her Majesty's Stationery Office or, until the Lord Chancellor otherwise directs, clear and legible facsimiles of such forms, may be used: see r 13 (amended by SI 1978/1638; SI 1995/260). The fee for registration of a light obstruction notice is £67 payable in advance: see the Local Land Charges Rules 1977, SI 1977/985, r 14, Sch 3 item 1 (Sch 3 substituted by SI 2003/2502). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3    Ie a certificate issued under the Rights of Light Act 1959 s 2(3)(a) or s 2(3)(b): see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 244. As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

4    Ibid r 10(1).

5    As to what are registering authorities see PARA 688 ante.

6    Local Land Charges Rules 1977, SI 1977/985, r 10(2). Registration is effected in accordance with r 6 (see PARAS 675, 686 ante): see r 10(2).

7    'Temporary certificate' means a certificate issued by the Lands Tribunal under the Rights of Light Act 1959 s 2(3)(b) (see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 244): Local Land Charges Rules 1977, SI 1977/985, r 10(7).

8    'Definitive certificate' means a certificate issued by the Lands Tribunal under the Rights of Light Act 1959 s 2(3)(a) (see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 244): Local Land Charges Rules 1977, SI 1977/985, r 10(7).

9 Ibid r 10(3). The fee for filing a definitive certificate is £2.50 payable in advance: Sch 3 item 2 (as substituted: see note 2 supra).

10 Ibid r 10(4). The fee for filing a judgment or order is £7 payable in advance: Sch 3 item 3 (as substituted: see note 2 supra).

11 'Owner' has the meaning assigned to it by the Rights of Light Act 1959 s 7(1) (see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 244); Local Land Charges Rules 1977, SI 1977/985, r 10(7).

12 'Servient land' has the meaning assigned to it by the Rights of Light Act 1959 s 2(1) (see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 244); Local Land Charges Rules 1977, SI 1977/985, r 10(7).

13 As to the prescribed form see ibid r 10(5), Sch 1 Form B. See also note 2 supra. The fee for filing an application for variation or cancellation of a registration is £7 payable in advance: Sch 3 item 3 (as substituted: see note 2 supra).

14 Ibid r 10(5)(a). 'Dominant building' has the meaning assigned to it by the Rights of Light Act 1959 s 2(1) (see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 244); Local Land Charges Rules 1977, SI 1977/985, r 10(7).

15 Ibid r 10(5)(b).

16 Ibid r 10(5).

17 Ibid r 10(6)(a).

18 Ibid r 10(6)(b).

19 Ibid r 10(6).

## UPDATE

### 691 Special provisions as to the registration of light obstruction notices

TEXT AND NOTES--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION vol 18 (2009) PARA 720 et seq). Rights of Light Act 1959 s 2(3); SI 1977/985 r 10(1), (7), Sch 3 item 2 amended: SI 2009/1307.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(3) EFFECTING REGISTRATION/692. Time when applications for registration are treated as having been delivered.

**692. Time when applications for registration are treated as having been delivered.**

An application for registration delivered between the time when the office of the registering authority<sup>1</sup> closes and the time when it next opens is treated as having been delivered immediately after that interval<sup>2</sup>.

<sup>1</sup> As to what are registering authorities see PARA 688 ante.

<sup>2</sup> Local Land Charges Rules 1977, SI 1977/985, r 5(2). For the purposes of the Local Land Charges Act 1975 s 10(5) (see PARA 694 post), it is regarded as practicable for a registering authority to register a charge on the day on which the application for registration is delivered or treated as having been delivered: Local Land Charges Rules 1977, SI 1977/985, r 5(1).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(4) EFFECT OF REGISTRATION; CANCELLATION/693. Effect of registration of local land charges.

## **(4) EFFECT OF REGISTRATION; CANCELLATION**

### **693. Effect of registration of local land charges.**

Generally, the registration of any instrument<sup>1</sup> or matter in any register kept under the Land Charges Act 1972<sup>2</sup> or any local land charges register<sup>3</sup> is deemed to constitute actual notice<sup>4</sup> of that instrument or matter, and of the fact of that registration, to all persons and for all purposes connected with the land<sup>5</sup> affected as from the date of registration or other prescribed date<sup>6</sup>, and so long as the registration continues in force<sup>7</sup>.

Certain charges<sup>8</sup> when registered as local land charges<sup>9</sup> take effect as if created by a deed of charge by way of legal mortgage<sup>10</sup>, but without prejudice to the priority of the charge<sup>11</sup>.

In general, failure to register a local land charge does not affect its enforceability, but in certain circumstances compensation for loss may be payable<sup>12</sup>.

1 As to the meaning of 'instrument' see PARA 616 note 1 ante.

2 As to the registers see PARA 607 ante.

3 As to the register and index see PARA 675 ante.

4 As to the equitable principle of notice see EQUITY vol 16(2) (Reissue) PARA 576 et seq.

5 As to the meaning of 'land' see PARA 616 note 5 ante.

6 As to the meaning of 'other prescribed dates' see PARA 616 note 6 ante. As to priority notices see PARA 614 ante.

7 Law of Property Act 1925 s 198(1) (amended by the Local Land Charges Act 1975 s 17(2), Sch 1). The Law of Property Act 1925 s 198 (as amended) operates without prejudice to the provisions of the Act respecting the making of further advances by a mortgagee (see s 94 (as amended)); and MORTGAGE vol 77 (2010) PARAS 264-265), and applies only to instruments and matters required or authorised to be registered in any such register: s 198(2) (amended by the Local Land Charges Act 1975 s 17(2), Sch 1). As to the meaning of 'mortgagee' see PARA 616 note 7 ante. As to mortgages generally see MORTGAGE. Failure to register a local land charge (other than those charges listed in note 12 infra) does not now affect its enforceability but a purchaser may in certain circumstances be entitled to compensation: see s 10(1) (as amended); and PARA 694 post.

8 I.e. those mentioned in *ibid* s 1(1)(a) (as amended) (see PARA 672 head (1) ante): see s 7.

9 For the meaning of 'local land charges' see PARA 672 ante.

10 For the meaning of 'charge by way of legal mortgage' see the Law of Property Act 1925 s 87 (amended by the Land Registration Act 2002 s 133, Sch 11 para 2(1), (8)); and MORTGAGE.

11 Local Land Charges Act 1975 s 7.

12 The registration of the following local land charges is an essential element of their enforceability: (1) a light obstruction notice under the Rights of Light Act 1959 s 2 (as amended) (see s 2(4)(b) (amended by the Local Land Charges Act 1975 s 17(2), Sch 1); paras 674 head (16), 691 ante; and EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 244); (2) a certificate or scheme under the Leasehold Reform Act 1967 s 19 (as amended) (see s 19(10A) (added by the Local Land Charges Act 1975 Sch 1); para 674 head (22) ante; and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1503); (3) an estate management scheme under the Leasehold Reform, Housing and Urban Development Act 1993 s 70 (as amended) (see s 70(13); para 674 head (23) ante; and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1736); (4) rights conferred by the Requisitioned Land and War Works Act 1948 s 12(1) (see s 14(4)(a) (s 14(4) substituted by the Local Land

Charges Act 1975 Sch 1); para 674 head (6) ante; and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 528); or (5) notices relating to wayleave orders under the Land Powers (Defence) Act 1958 s 14 (as amended) (see s 17(3)(a) (s 17(3) substituted by the Local Land Charges Act 1975 s 17(2), Sch 1); para 674 head (14) ante; and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 529).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(4) EFFECT OF REGISTRATION; CANCELLATION/694. Compensation for non-registration or defective official search certificate.

**694. Compensation for non-registration or defective official search certificate.**

Failure to register a local land charge<sup>1</sup> in the appropriate local land charges register<sup>2</sup> does not generally affect the enforceability of the charge<sup>3</sup>. However, where a person has purchased any land<sup>4</sup> affected by such a charge then:

- 93 (1) where a material personal search<sup>5</sup> of the appropriate local land charges register was made in respect of the land in question before the relevant time<sup>6</sup>, if at the time of the search the charge was in existence but not registered in that register<sup>7</sup>; or
- 94 (2) where the appropriate local land charges register is kept otherwise than in documentary form and a material personal search of the register was made in respect of the land in question before the relevant time, if the entitlement to search in that register was not satisfied by the registering authority making the relevant portion of the register available for inspection in visible and legible form<sup>8</sup>; or
- 95 (3) where a material official search<sup>9</sup> of the appropriate local land charges register was made in respect of the land in question before the relevant time, if the charge was in existence at the time of the search but (whether registered or not) was not shown by the official search certificate as registered in that register<sup>10</sup>,

the purchaser is entitled, subject to certain exceptions<sup>11</sup>, to compensation for any loss suffered by him in consequence<sup>12</sup>.

The compensation is paid by the registering authority<sup>13</sup> in whose area the land affected is situated<sup>14</sup>. Where the purchaser has incurred expenditure for the purpose of obtaining compensation, the amount of the compensation must include the amount of the expenditure reasonably incurred by him for that purpose (so far as that expenditure would not otherwise fall to be treated as loss for which he is entitled to compensation under the provisions described above)<sup>15</sup>. In the case of a claim to recover compensation, the cause of action is deemed<sup>16</sup> to accrue at the time when the local land charge comes to the notice of the purchaser<sup>17</sup>. Where the amount claimed by way of compensation does not exceed £5,000, proceedings for the recovery of that compensation may be begun in the county court<sup>18</sup>. If, in any proceedings for the recovery of compensation, the court<sup>19</sup> dismisses a claim to compensation, it must not order the purchaser to pay the registering authority's costs unless it considers that it was unreasonable for the purchaser to commence the proceedings<sup>20</sup>.

1 For the meaning of 'local land charges' see PARA 672 ante.

2 For the meaning of 'the appropriate local land charges register' see PARA 689 note 3 ante.

3 Local Land Charges Act 1975 s 10(1). As to where this provision does not apply see s 5(6); and PARA 671 note 2 ante. As to cases where registration is an essential element of enforceability see PARA 693 note 12 ante.

4 As to the meaning of 'land' see PARA 672 note 2 ante. A person purchases land where, for valuable consideration, he acquires any interest in land or the proceeds of sale of land; and this includes cases where he acquires as lessee or mortgagee; and is to be treated as including cases where an interest is conveyed or assigned at his direction to another person: *ibid* s 10(3)(a).



5 A personal search is material only if it is made: (1) after 1 August 1977 (see PARA 671 note 2 ante); and (2) by or on behalf of the purchaser or, before the relevant time (see note 6 infra), the purchaser or his agent has knowledge of the result of it: *ibid* s 10(3)(c). As to searches see PARA 705 post.

6 The relevant time is: (1) where the acquisition of the interest in question was preceded by a contract for its acquisition (other than a contract dependent upon or avoidable by reference to a search for local land charges) the time when that contract was made; and (2) in any other case, the time when the purchaser acquired the interest in question or, if he acquired it under a disposition which took effect only when registered in the register of title kept under the Land Registration Act 2002, the time when the disposition was made: Local Land Charges Act 1975 s 10(3)(b) (amended by the Land Registration Act 2002 s 133, Sch 11 para 13). As to registration in the register of title see LAND REGISTRATION vol 26 (2004 Reissue) PARA 810 et seq.

7 Local Land Charges Act 1975 s 10(1)(a).

8 *Ibid* s 10(1)(aa) (added by the Local Government (Miscellaneous Provisions) Act 1982 s 34(d)(ii)). The entitlement to search in that register is conferred by the Local Land Charges Act 1975 s 8 (as amended) as mentioned in s 8(1A) (as added): see s 10(1)(aa) (as so added).

9 An official search is material only if: (1) it is made after 1 August 1977; and (2) it is requisitioned by or on behalf of the purchaser or, before the relevant time, the purchaser or his agent has knowledge of the contents of the official search certificate: *ibid* s 10(3)(d)(ii). As to official certificates of search see PARA 705 post.

10 *Ibid* s 10(1)(b) (amended by the Land Registration Act 2002 Sch 11 para 13).

11 Where an interest is subject to a mortgage, the claim may be made by any mortgagee of the interest as if he were the person entitled to that interest but without prejudice to the making of a claim by that person: Local Land Charges Act 1975 s 11(1)(a). No compensation is payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage): s 11(1)(b). Any compensation payable in respect of the interest that is subject to the mortgage must be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and it must in either case be applied by him as if it were proceeds of sale: s 11(1)(c). Where any interest is subject to a trust of land, any compensation payable in respect of it must be dealt with as if it were proceeds of sale arising under the trust: s 11(2) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 14). Where any interest is settled land for the purposes of the Settled Land Act 1925, any compensation payable in respect of it must be treated as capital money arising under that Act: Local Land Charges Act 1975 s 11(3). For the meaning of 'trust of land' see PARA 631 note 2 ante; definition applied by virtue of the Interpretation Act 1978 s 5, Sch 1 (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 16). As to the meaning of 'settled land' see PARA 605 note 3 ante. With limited exceptions, it is no longer possible to create new settlements under the Settled Land Act 1925: see the Trusts of Land and Appointment of Trustees Act 1996; and REAL PROPERTY vol 39(2) (Reissue) PARA 64 et seq; SETTLEMENTS vol 42 (Reissue) PARA 676. See also SALE OF LAND; TRUSTS vol 48 (2007 Reissue) PARA 601. No compensation is payable in respect of a charge not required to be registered by the Local Land Charges Act 1975 s 19(2): see PARA 672 ante.

12 *Ibid* s 10(1) (amended by the Local Government (Miscellaneous Provisions) Act 1982 s 34(d)(ii)). In the event of rules providing for the local land charges register to be divided into parts, a personal or official search of a part or parts only of that register does not constitute a search of that register in relation to any local land charge registrable in a part of the register not searched; and a charge is not taken to be registered in the appropriate local land charges register unless registered in the appropriate part of the register: Local Land Charges Act 1975 s 10(2). As to the rules so providing see the Local Land Charges Rules 1977, SI 1977/985, r 3; and PARA 675 ante. See *Smith v South Gloucestershire Council* [2002] EWCA Civ 1131, [2002] 38 EG 206 (compensation is to be assessed as at the actual date of assessment rather than the date of discovery of the land charge); *Pound v Ashford Borough Council* [2003] EWHC 1088 (Ch), [2003] All ER (D) 222 (May) (purchaser only entitled to compensation for losses which resulted from enforceability of the charge).

13 As to what are registering authorities see PARA 688 ante.

14 Local Land Charges Act 1975 s 10(4). Where compensation is paid by a registering authority in respect of a local land charge as respects which it is not the originating authority, then, unless an application for registration of the charge was made to the registering authority by the originating authority in time for it to be practicable for the registering authority to avoid incurring liability to pay that compensation, an amount equal to it is recoverable from the originating authority by the registering authority: s 10(5). For the meaning of 'originating authority' see PARA 689 note 1 ante. See also the Local Land Charges Rules 1977, SI 1977/985, r 5; and PARA 692 ante. For restrictions on the right to recover compensation from any other person, except under a policy of insurance or on grounds of fraud, see the Local Land Charges Act 1975 s 10(6).

15 *Ibid* s 10(4).

16 le for the purposes of the Limitation Act 1980: see the Local Land Charges Act 1975 s 10(7); the Interpretation Act 1978 s 17(2)(a); and LIMITATION PERIODS.

17 Local Land Charges Act 1975 s 10(7); Interpretation Act 1978 s 17(2)(a). The question when the charge came to the purchaser's notice is determined without regard to the Law of Property Act 1925 s 198 (as amended) (see PARA 693 ante): see the Local Land Charges Act 1975 s 10(7); and the Interpretation Act 1978 s 17(2)(a).

18 Local Land Charges Act 1975 s 10(8) (substituted by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(8), Schedule Pt 1).

19 For the meaning of 'the court' see PARA 689 note 6 ante.

20 Local Land Charges Act 1975 s 10(9).

## **UPDATE**

### **694 Compensation for non-registration or defective official search certificate**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/3. LOCAL LAND CHARGES/(4) EFFECT OF REGISTRATION; CANCELLATION/695. Amendment and cancellation of registrations.

### **695. Amendment and cancellation of registrations.**

Where a registered charge<sup>1</sup> has been varied or modified or any registration is incorrect, the registering authority<sup>2</sup> must amend the registration accordingly<sup>3</sup>. Where a registered charge has been discharged, ceased to have effect or ceased to be a charge, that authority must cancel the registration<sup>4</sup>. Where the originating authority<sup>5</sup> as respects a charge the registration of which falls to be amended or cancelled is not the registering authority, it must supply the registering authority with any information available to the originating authority which is necessary to enable the registering authority to amend or cancel the registration<sup>6</sup>. The registration of a local land charge<sup>7</sup> may be cancelled pursuant to a court order<sup>8</sup>.

1 For the meaning of 'charge' see PARA 675 note 9 ante.

2 As to what are registering authorities see PARA 688 ante.

3 Local Land Charges Rules 1977, SI 1977/985, r 8(1)(a).

4 Ibid r 8(1)(b).

5 For the meaning of 'originating authority' see PARA 676 note 8 ante.

6 Local Land Charges Rules 1977, SI 1977/985, r 8(2). These provisions do not apply to any condition or limitation registered before 1 August 1977 which by virtue of the Local Land Charges Act 1975 s 2(e) (as amended) (see PARA 673 head (5) ante) is not a local land charge: Local Land Charges Rules 1977, SI 1977/985, r 8(3).

7 For the meaning of 'local land charges' see PARA 672 ante.

8 See the Local Land Charges Act 1975 s 5(5); and PARA 689 ante. For the meaning of 'the court' see PARA 689 note 6 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(1) SUBJECTS OF CENTRAL REGISTRATION/696. Right and need to search.

## 4. SEARCHES

### (1) SUBJECTS OF CENTRAL REGISTRATION

#### 696. Right and need to search.

Any person may search in any register kept under the Land Charges Act 1972<sup>1</sup> on paying the prescribed fee<sup>2</sup>. The registrar<sup>3</sup> may provide facilities for enabling persons entitled to search to see photographic or other images or copies of any portion of the register which they may wish to examine<sup>4</sup>. On investigation of title to registered land<sup>5</sup>, a search in the registers kept under the Land Charges Act 1972 is unnecessary but search in respect of local land charges<sup>6</sup> is necessary whether the title to the land is registered or unregistered<sup>7</sup>. In the case of unregistered land, a search for the matters which are the subjects of registration under the Land Charges Act 1972 is an essential step in the investigation of title<sup>8</sup>. Such a search may also have relevance where a mortgagee of unregistered land consisting, or substantially consisting, of a dwelling-house is taking proceedings to enforce the security<sup>9</sup>.

1 As to the registers see PARA 607 ante.

2 Land Charges Act 1972 s 9(1). For the meaning of 'prescribed' see PARA 607 note 3 ante. The fee for the inspection of an entry in the register is £1 per entry: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 4. As to applications for official searches and the fees payable see PARA 699 post.

3 As to the meaning of 'registrar' see PARA 602 note 2 ante.

4 Land Charges Act 1972 s 9(2).

5 See the Land Registration Act 2002 s 87 (see LAND REGISTRATION vol 26 (2004 Reissue) PARAS 1019-1020); and the Land Charges Act 1972 s 14 (as amended) (see PARA 605 ante). As to possessory title and registration see the Land Registration Act 2002 ss 9(5), 10(6), 11(7), 12(8); and LAND REGISTRATION vol 26 (2004 Reissue) PARAS 837, 841). As to the conclusiveness of the register of title see further LAND REGISTRATION vol 26 (2004 Reissue) PARA 859; and as to upgrading of title see LAND REGISTRATION vol 26 (2004 Reissue) PARA 875 et seq. In the case of a registered interest, the essential search is in the register of title to that interest (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 1110 et seq).

6 For the meaning of 'local land charges' see PARA 672 ante.

7 The register of title is not conclusive as to the existence or otherwise of local land charges, which are overriding interests so far as they affect registered land, and the statutory provisions relative to them are accordingly applicable as well to registered as to unregistered land: see the Land Registration Act 2002 ss 11-12, 29-30, Sch 1 para 6, Sch 3 para 6; the Local Land Charges Act 1975 s 19(3) (repealed by the Land Registration Act 2002 s 135, Sch 13); paras 672 note 18 ante, 705 post; and LAND REGISTRATION vol 26 (2004 Reissue) PARAS 866, 962. A person intending to advance money on the security of a charge or mortgage, which is intended to be completed contemporaneously with the purchase of the land by the intending mortgagor, may make a search to ascertain whether the intending mortgagor is the subject of bankruptcy proceedings in the register of pending actions (see PARA 647 ante), the register of writs and orders affecting land (see PARA 654 ante) and the register of deeds of arrangement affecting land (see PARA 662 ante) whether the title to the land which is intended to be the subject of the security is registered or unregistered: see the Land Charges Rules 1974, SI 1974/1286, rr 2(3), 16(1), Sch 2 Form K16. It should be noted that a local land charge secured by the payment of money cannot be realised unless it is registered as a registered charge: see the Land Registration Act 2002 s 55; and LAND REGISTRATION vol 26 (2004 Reissue) PARA 949.

8 Registration under the Land Charges Act 1972 of an instrument or matter required or authorised to be so registered constitutes actual notice of that instrument or matter and of the fact of registration: see the Law of Property Act 1925 s 198 (as amended); and PARA 616 ante. As to the advisability of obtaining an official

certificate of search see *Oak Co-operative Building Society v Blackburn* [1968] Ch 730 at 743-744, [1968] 2 All ER 117 at 122-123, CA.

9 See PARA 638 note 2 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(1) SUBJECTS OF CENTRAL REGISTRATION/697. Special searches.

### **697. Special searches.**

Searches in the local land charges<sup>1</sup> register<sup>2</sup> are required in all cases where title is being investigated<sup>3</sup>, and in the case of unregistered land a special search may be required where the vendor is a company<sup>4</sup> or where the land includes farm property<sup>5</sup>.

1 For the meaning of 'local land charges' see PARA 672 ante.

2 As to the register and index see PARA 675 et seq ante.

3 As to local land charge searches see PARA 705 post.

4 Where unregistered land is being purchased from a registered company, a search should be made in the register of mortgages and charges kept by the registrar of companies under the Companies Act 1985 (see COMPANIES vol 15 (2009) PARAS 1277-1280) because in the case of land charges for securing money created by companies before 1 January 1970, or so created at any time as a floating charge, registration in that register operates as, and takes the place of, registration under the Land Charges Act 1972: see s 3(7), (8) (s 3(8) amended by the Companies Consolidation (Consequential Provisions) Act 1985, s 30, Sch 2). See also PARA 606 ante. It may also be advisable to inquire as to a possible winding up resolution, or winding up order or petition: see generally COMPANIES.

5 Agricultural charges to secure loans to farmers must be registered pursuant to the Agricultural Credits Act 1928 s 9 (as amended): see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1331. Registration is effected in the register of agricultural charges maintained in the Agricultural Credits Department of Her Majesty's Land Registry. As to arrangements for official search of that register see s 9(7), Schedule (as added and amended); and AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1331.

### **UPDATE**

### **697 Special searches**

NOTE 4--Land Charges Act 1972 s 3(8) amended: SI 2009/1941.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(1) SUBJECTS OF CENTRAL REGISTRATION/698. Scope of searches.

**698. Scope of searches.**

Searches<sup>1</sup> should be made against every person appearing by the abstract to have been the owner of the legal estate in the land<sup>2</sup>, but in practice they are often confined to the period since the last preceding sale or mortgage because evidence as to the results of searches made in respect of earlier transactions will normally be included in the abstract of title<sup>3</sup>.

1     le searches under the Land Charges Act 1972: see PARA 696 ante.

2     The search should be made against the relevant estate owner's names as disclosed by the conveyance to the purchaser and not against any other names, whether those other names are described as the estate owner's full, actual names or the names that appear on the birth certificate: see *Standard Property Investment plc v British Plastics Federation* (1985) 53 P & CR 25; and PARAS 609 ante, 701 post.

3     See *Emmet on Title* (19th Edn, 1986) PARA 8.006. Provision is made for compensation to be paid (where certain conditions are satisfied) to a purchaser who suffers loss because, from the title which his vendor is by statute or by contract required to deduce, he is unable to identify all persons who have been owners of the legal estate for the purpose of searching against them and thus takes the land subject to a registered land charge of which he has no knowledge at the date of completion of the purchase: see the Law of Property Act 1969 s 25 (as amended); and PARA 617 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(1) SUBJECTS OF CENTRAL REGISTRATION/699. Application for official search.

### **699. Application for official search.**

Where any person requires a search to be made at the registry<sup>1</sup> for entries of any matters or documents, he may make a requisition in that behalf to the registrar<sup>2</sup>. The requisition may be either: (1) a written requisition delivered at or sent by post to the registry<sup>3</sup>; or (2) a requisition communicated by teleprinter, telephone or other means in such manner as may be prescribed<sup>4</sup> in relation to the means in question<sup>5</sup>, in which case it is to be treated as made to the registrar, if he accepts it<sup>6</sup>. The registrar must not accept a requisition communicated by teleprinter, telephone or other prescribed means unless it is made by a person maintaining a credit account at the registry, and may at his discretion refuse to accept it notwithstanding that it is made by such a person<sup>7</sup>.

Where an applicant for an official search in the index<sup>8</sup> makes his application<sup>9</sup> by telephone and requests the result of the search to be given to him orally as part of the same telephone call<sup>10</sup>, or delivers the prescribed form of application in person at the principal office or at such other office as the registrar may direct and requests the result of the search to be displayed to him<sup>11</sup>, the registrar may comply with the request in such manner and on such conditions as he may determine<sup>12</sup>.

The prescribed fee is payable in respect of every requisition<sup>13</sup>. In the case of a requisition delivered at or sent by post to the registry, the fee must be paid in the prescribed manner unless the requisition is made by a person maintaining a credit account at the registry and the fee is debited to that account<sup>14</sup>. In the case of a requisition communicated by teleprinter, telephone or other prescribed means, the fee must be debited to the credit account of the person by whom the requisition is made<sup>15</sup>.

1 As to the meaning of 'registry' see PARA 602 note 2 ante.

2 Land Charges Act 1972 s 10(1). As to the meaning of 'registrar' see PARA 602 note 2 ante.

3 Ibid s 10(1)(a). A written application for an official search in the index must be made in Form K15 or, where a search is only required to be made in respect of petitions in bankruptcy in the register of pending actions, or bankruptcy orders in the register of writs and orders or deeds of arrangement in the register of deeds of arrangement, in Form K16: Land Charges Rules 1974, SI 1974/1286, rr 2(3), 16(1), Sch 2 Forms K15, K16. Unless the registrar otherwise directs, every written application must be sent by pre-paid post, or delivered by hand, to the principal office: r 20(1). For the meaning of 'principal office' see PARA 602 note 2 ante.

4 For the meaning of 'prescribed' see PARA 607 note 3 ante.

5 An application for an official search in the index made by telephone must provide, in such order as may be requested, the same particulars as are required for an application made in Form K15: Land Charges Rules 1974, SI 1974/1286, r 16(2), Sch 2 Form K15. An application for an official search pursuant to r 16(2) must be made by telephone to the principal office or such other office as the registrar directs: r 20(4). For the form of application for an official search in the index transmitted by teleprinter see r 16(3), Sch 3 Pt I. An application for an official search pursuant to r 16(3) must be transmitted by teleprinter to the principal office: r 20(3). An application for an official search in the index may be made by facsimile transmission and must be made in Form K15 or Form K16, whichever is appropriate: r 16(4), Sch 2 Forms K15, K16 (r 16(4) added by SI 1990/485). An application for an official search pursuant to the Land Charges Rules 1974, SI 1974/1286, r 16(4) (as added) must be made by facsimile transmission to the principal office: r 20(5) (added by SI 1990/485). An application for an official search in the index may be made to the registrar by means of an applicant's remote terminal communicating with the registrar's computer and, if so made, the applicant must provide, in such order as may be requested, such of the particulars as are appropriate and are required for an application in Form K15 or Form K16: Land Charges Rules 1974, SI 1974/1286, r 16(5), Sch 2 Forms K15, K16 (r 16(5) added by SI 1994/287; and substituted by SI 1995/1355). As to applications for office copies of entries in the registers see PARA 702 post.



- 6 Land Charges Act 1972 s 10(1)(b).
- 7 Ibid s 10(1). As to credit accounts see PARA 612 ante.
- 8 As to the meaning of 'index' see PARA 607 note 9 ante.
- 9 As to the meaning of 'application' see PARA 609 note 10 ante.
- 10 Land Charges Rules 1974, SI 1974/1286, r 18(a).
- 11 Ibid r 18(b). As to the form of application for an official search see Sch 2 Form K15.
- 12 Ibid r 18.
- 13 Land Charges Act 1972 s 10(2). The fee for an official search in the index, including the issue of a printed certificate of the result, is, in the case of a written application, £1 per name, and in the case of an application by any other means, £2 per name: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, r 2, Sch 1 item 6 (amended by SI 1994/286). The fee for an official search of the index, including a visual display of the result of search and the issue of a printed certificate of that result, is £2 per name: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, Sch 1 item 7. As to certificates of the results of searches see PARA 700 post.
- 14 Land Charges Act 1972 s 10(2)(a); Land Charges Rules 1974, SI 1974/1286, r 20(2). As to credit accounts and the payment of fees generally see PARA 612 ante.
- 15 Land Charges Act 1972 s 10(2)(b).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(1) SUBJECTS OF CENTRAL REGISTRATION/700. Official certificate of search.

### **700. Official certificate of search.**

Where a requisition is made and the fee payable paid or debited to a credit account<sup>1</sup>, the registrar<sup>2</sup> must make the search required and:

- 96 (1) issue a certificate setting out the result of the search<sup>3</sup>; and
- 97 (2) take such other steps as he considers appropriate to communicate that result to the person by whom the requisition was made<sup>4</sup>.

In the absence of fraud<sup>5</sup> on his part, no officer, clerk or employee in the registry<sup>6</sup> is liable for any loss which may be suffered:

- 98 (a) by reason of any discrepancy between:
  - 11 18. (i) the particulars which are shown in a certificate as being the particulars in respect of which the search for entries was made<sup>7</sup>; and
  - 19. (ii) the particulars in respect of which a search for entries was required by the person who made the requisition<sup>8</sup>; or
- 12 99 (b) by reason of any communication of the result of a search made otherwise than by issuing a certificate<sup>9</sup>.

The certificate of the result of a search extends to all entries bearing dates of registration up to and including the date of the certificate<sup>10</sup>.

1    le under the Land Charges Act 1972 s 10(1), (2) (see PARA 599 ante): s 10(3). As to credit accounts see PARA 612 ante.

2    As to the meaning of 'registrar' see PARA 602 note 2 ante.

3    Land Charges Act 1972 s 10(3)(a). As to the form of a certificate of the result of an official search see the Land Charges Rules 1974, SI 1974/1286, r 17(1), Sch 2 Forms K17, K18. By implication, the registrar's statutory duty is to make the search accurately and to issue a complete and accurate certificate of search: see *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223 at 267, [1970] 1 All ER 1009 at 1018, CA, per Lord Denning MR. It therefore seems that, notwithstanding the absence of any provisions for the payment of indemnity in those circumstances in the Land Charges Act 1972, the registrar is liable to pay compensation for loss which can clearly be shown to have arisen directly from the issue of an incomplete or inaccurate certificate of the result of a search. See s 10(6); and the text and notes 6-9 infra. The registrar is not concerned to inquire into or otherwise verify the accuracy or validity of any matter or thing stated in any application for, amongst other things, a search: see the Land Charges Rules 1974, SI 1974/1286, r 22; and PARA 611 ante. As to the protection afforded to a purchaser see PARA 701 post. As to office copies of entries revealed by the certificate of search see PARA 702 post.

4    Land Charges Act 1972 s 10(3)(b).

5    As to the position where there is fraud see PARA 704 post.

6    As to the meaning of 'registry' see PARA 602 note 2 ante. 'Officer' includes the registrar: see *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223 at 266, 273, [1970] 1 All ER 1009 at 1016, 1022-1023, CA.

7    Land Charges Act 1972 s 10(6)(a)(i).

8 Ibid s 10(6)(a)(ii).

9 Ibid s 10(6)(b).

10 Land Charges Rules 1974, SI 1974/1286, r 17(3). The date of the certificate is the date of the day on which the search is commenced or such earlier day as may be necessary to enable the registrar to comply with the requirement of r 17(3): r 17(2). For the meaning of 'day' see PARA 613 note 5 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(1) SUBJECTS OF CENTRAL REGISTRATION/701. Protection of purchasers.

### **701. Protection of purchasers.**

In favour of a purchaser<sup>1</sup> or intending purchaser, as against persons interested under or in respect of matters or documents entries of which are required or allowed to be made, an official certificate of search<sup>2</sup>, according to its tenor, is conclusive, affirmatively or negatively, as the case may be<sup>3</sup>. Where a purchaser has obtained a certificate, any entry made in the register<sup>4</sup> after the date of the certificate and before the completion of the purchase<sup>5</sup>, which is not made pursuant to a priority notice<sup>6</sup> entered on the register on or before the date of the certificate, does not affect the purchaser if the purchase is completed before the expiration of 15 days after the date of the certificate<sup>7</sup>. A purchaser is only protected if his application for a certificate of search gives no reasonable scope for misunderstanding as to the identity of the property to which the search is intended to relate<sup>8</sup>. In order to give protection, the search must be made against the estate owner's names as disclosed by the conveyance to the purchaser and not against any other names, whether those names are described as the estate owner's full or actual names or are the names that appear on a birth certificate<sup>9</sup>.

1 For the meaning of 'purchaser' see PARA 616 note 16 ante.

2 As to the official certificate of search see PARA 700 ante.

3 Land Charges Act 1972 s 10(4). See also s 10(6); and PARA 700 text and notes 5-9 ante.

4 As to the registers see PARA 607 ante.

5 For the meaning of 'purchase' see PARA 632 note 4 ante.

6 As to priority notices see PARA 614 ante.

7 Land Charges Act 1972 s 11(5), (6)(a). See also PARA 614 ante.

8 *Du Sautoy v Symes* [1967] Ch 1146, [1967] 1 All ER 25.

9 *Standard Property Investment plc v British Plastics Federation* (1985) 53 P & CR 25. As to the effect of a registration made in a version of the estate owner's full names as against a search made against his correct full names (see PARAS 609 note 2, 698 note 2 ante) see also *Oak Co-operative Building Society v Blackburn* [1968] Ch 730, [1968] 2 All ER 117, CA; *Diligent Finance Co Ltd v Alleyne* (1972) 23 P & CR 346.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(1) SUBJECTS OF CENTRAL REGISTRATION/702. Office copies.

## **702. Office copies.**

An office copy of an entry in any register kept under the Land Charges Act 1972<sup>1</sup> is admissible in evidence in all proceedings and between all parties to the same extent as the original would be admissible<sup>2</sup>.

<sup>1</sup> ie the registers kept under the Land Charges Act 1972 s 1 (as amended): see PARA 607 ante.

<sup>2</sup> Ibid s 1(5). A written application for an office copy of an entry in a register must be made in the prescribed form: see the Land Charges Rules 1974, SI 1974/1286, rr 2(3), 19(1), Sch 2 K19. Such an application must, unless the registrar directs otherwise, be sent by pre-paid post, or be delivered by hand, to the principal office: r 20(1). Where the applicant has a credit account and the prescribed fee is debited by the registrar to that account, an application for an office copy may also be made by teleprinter: r 19(2), Sch 3 Pt II. As to the meaning of 'registrar' see PARA 602 note 2 ante. As to credit accounts see PARA 612 ante. Such an application must be transmitted by teleprinter to the principal office: r 20(3). For the meaning of 'principal office' see PARA 602 note 2 ante. Where an application has been made by telephone for an official search in the index and the result has been given orally in accordance with r 18 (see PARA 699 ante), the applicant may request, as part of the same telephone call, that an office copy of an entry disclosed and identified in the result of the search be sent to him, and the fee must then be debited to his credit account: r 19(3). Such an application must be made by telephone to the principal office or such other office as the registrar directs: r 20(4). Where the applicant has a credit account and the prescribed fee is debited by the registrar to that account, an application for the office copy of an entry in a register may also be made by facsimile transmission in Form K19 (see r 19(4) (added by SI 1990/485)), or by means of the applicant's remote terminal communicating with the registrar's computer, in which latter case the applicant must provide, in such order as may be requested, such of the particulars as are appropriate and are required in an application in Form K19 (see the Land Charges Rules 1974, SI 1974/1286, r 19(5), Sch 2 Form K19 (r 19(5) added by SI 1994/287; and substituted by SI 1995/1355)). An application for an office copy pursuant to the Land Charges Rules 1974, SI 1974/1286, r 19(4) (as added) must be made by facsimile transmission to the principal office: r 20(5) (added by SI 1990/485). The fee for an office copy of an entry in the register (including any plan), whether the application is made in writing or by telephone or teleprinter or facsimile transmission or to the registrar's computer system by means of the applicant's remote terminal, is £1 per copy: Land Charges (Fees) Order 1990, SI 1990/323, art 2; Land Charges Fees Rules 1990, SI 1990/327, art 2, Sch 1 item 5 (amended by SI 1994/286).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(1) SUBJECTS OF CENTRAL REGISTRATION/703. Protection of solicitors, trustees etc.

**703. Protection of solicitors, trustees etc.**

A solicitor<sup>1</sup> or a trustee, personal representative, agent or other person in a fiduciary position, is not answerable: (1) in respect of any loss occasioned by reliance on an office copy<sup>2</sup> of an entry in any register kept under the Land Charges Act 1972<sup>3</sup>; or (2) for any loss that may arise from error in a certificate of official search<sup>4</sup> obtained by him<sup>5</sup>.

1 The reference to a solicitor is to be construed as including a reference to: (1) a licensed conveyancer (Administration of Justice Act 1985 s 34(2)(c)); or (2) a body corporate (s 9(6), Sch 2 para 37(c)). As to recognised bodies see s 9 (as amended), s 32; and LEGAL PROFESSIONS vol 65 (2008) PARA 687 et seq. As to licensed conveyancers see LEGAL PROFESSIONS vol 66 (2009) PARA 1319 et seq.

2 As to office copies see PARA 702 ante.

3 I.e. the registers kept under the Land Charges Act 1972 s 1 (as amended) (see PARA 607 ante): s 12(a).

4 I.e. a certificate under ibid s 10 (as amended) (see PARAS 699-701 ante): see s 12(b). As to applications for official searches see PARA 699 ante; and as to official certificates of search see PARA 700 ante.

5 Ibid s 12(b).

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(1) SUBJECTS OF CENTRAL REGISTRATION/704. Officials personally liable.

**704. Officials personally liable.**

If any officer<sup>1</sup>, clerk or employee in the registry<sup>2</sup> commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate of search<sup>3</sup>, he is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the prescribed sum, or to both such imprisonment and fine<sup>4</sup>.

1 'Officer' includes the registrar: *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223 at 266, 273, [1970] 1 All ER 1009 at 1016, 1022-1023, CA.

2 As to the meaning of 'registry' see PARA 602 note 2 ante.

3 I.e. a certificate under the Land Charges Act 1972 s 10 (as amended) (see PARAS 699-701 ante).

4 Ibid s 10(5) (amended by the Magistrates' Courts Act 1980 s 32(2)). 'Prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS VOL 92 (2010) PARA 141.

As to the position in the absence of fraud see the Land Charges Act 1972 s 10(6); and PARA 700 text and notes 5-9 ante.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(2) LOCAL LAND CHARGES/705. Searches and official certificates of search.

## **(2) LOCAL LAND CHARGES**

### **705. Searches and official certificates of search.**

Any person may search in any local land charges register<sup>1</sup> on paying the prescribed fee<sup>2</sup>. If a local land charges register is kept otherwise than in documentary form, the entitlement of a person to search in it is satisfied if the registering authority<sup>3</sup> makes the portion of it which he wishes to examine available for inspection in visible and legible form<sup>4</sup>. A registering authority may provide facilities for enabling persons entitled to search in the authority's local land charges register to see photographic or other images or copies of any portion of the register which they may wish to examine<sup>5</sup>.

Where any person requires an official search of the appropriate local land charges register<sup>6</sup> to be made in respect of any land<sup>7</sup>, he may make a requisition<sup>8</sup> in that behalf to the registering authority<sup>9</sup>. The prescribed fee is payable in the prescribed manner in respect of every such requisition<sup>10</sup>. Where a requisition for an official search is made to a registering authority and the fee payable in respect of it is paid<sup>11</sup>, the registering authority must then make the search required and issue an official certificate setting out the result of the search<sup>12</sup>.

Where there are subsisting registrations, an official search certificate must be accompanied by a schedule showing the particulars of the registrations<sup>13</sup>. A separate requisition for an official search must be made in respect of each parcel of land<sup>14</sup> against which a search is required, except where for the purpose of a single transaction a search is required in respect of two or more parcels of land which have a common boundary or are separated only by a road, railway, river, stream or canal<sup>15</sup>.

A requisition for an official search may be made by electronic means where the local authority to whom it is made consents to the use of those means<sup>16</sup>. An official certificate of search may be issued by electronic means where the person requiring the search consents to the use of those means<sup>17</sup>.

1 As to the register and index see PARA 675 ante.

2 Local Land Charges Act 1975 s 8(1). For the prescribed fees for personal and official searches see the Local Land Charges Rules 1977, SI 1977/985, r 14, Sch 3 (substituted by SI 2003/2502).

3 As to registering authorities see PARA 688 ante.

4 Local Land Charges Act 1975 s 8(1A) (added by the Local Government (Miscellaneous Provisions) Act 1982 s 34(b)).

5 Local Land Charges Act 1975 s 8(2) (amended by the Local Government (Miscellaneous Provisions) Act 1982 s 34(c)). This is without prejudice to the Local Land Charges Act 1975 s 8(1), (1A) (as added) (see the text and notes 1-4 supra): see s 8(2) (as so amended).

6 For the meaning of 'appropriate local land charges register' see PARA 689 note 3 ante.

7 As to the meaning of 'land' see PARA 672 note 2 ante.

8 The normal provisions governing the service of notices etc on a local authority apply to such a requisition, and for this purpose are applied to the Common Council of the City of London: see the Local Government Act 1972 s 231(1); and the Local Land Charges Act 1975 s 9(2) (amended by the Local Government and Housing Act 1989 s 158(1)). See LOCAL GOVERNMENT vol 69 (2009) PARA 578. As to the Common Council of the City of



London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq. For the meaning of 'local authority' see PARA 672 note 5 ante.

9 Local Land Charges Act 1975 s 9(1). As to the prescribed form of requisition for an official search and official search certificate see the Local Land Charges Rules 1977, SI 1977/985, r 11(2), Sch 1 Form C (r 11(2) amended by SI 1995/260). Subject to the provision for official searches by electronic means, except for the purpose of schedules accompanying official search certificates, no forms other than those supplied by Her Majesty's Stationery Office or, until the Lord Chancellor otherwise directs, clear and legible facsimiles of such forms, may be used for these purposes: see the Local Land Charges Rules 1977, SI 1977/985, r 13 (amended by SI 1978/1638; SI 1995/260). As to searches by electronic means see the text and note 17 infra. As to Her Majesty's Stationery Office see STATUTES vol 44(1) (Reissue) PARAS 1249-1250. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

10 Local Land Charges Act 1975 s 9(3). See note 2 supra.

11 *Ie* under *ibid* s 9(3).

12 *Ibid* s 9(4).

13 Local Land Charges Rules 1977, SI 1977/985, r 11(4) (amended by SI 1995/260). That schedule must be substantially in accordance with the Local Land Charges Rules 1977, SI 1977/985, r 6, Sch 2, or such numbered parts of Sch 2 as are appropriate: r 11(4) (as so amended). As to office copies of entries revealed by a search see PARA 707 post. As to the payment in certain circumstances of compensation for loss arising from defective searches see PARA 694 ante.

14 'Parcel of land' means land which is separately occupied or rated or, if not occupied or rated, in separate ownership; and for this purpose an owner is the person who (in his own right or as trustee for any other person) is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let: *ibid* r 2(2).

15 *Ibid* r 11(3).

16 *Ibid* r 16(1) (r 16 added by SI 1995/260). The requisition may be made by these means notwithstanding the Local Government Act 1972 s 231(1) (service of documents on local authorities: see note 8 supra; and LOCAL GOVERNMENT vol 69 (2009) PARA 578).

17 Local Land Charges Rules 1977, SI 1977/985, r 16(2) (as added: see note 16 supra). Where a requisition is made or an official search certificate is issued by electronic means, the information that would otherwise be required to be set out in Form C (see note 9 supra) must be transmitted electronically together with: (1) in the case of a requisition, the name of the person making the requisition or his solicitor; or (2) in the case of a search certificate, the name and office of the person certifying the search and the name of the registering authority: r 16(3) (as so added). The signatures otherwise required by the rules are not to be transmitted: r 16(4) (as so added).

## UPDATE

### 705-708 Local Land Charges

As to the specification of fees by registering authorities in England see PARA 708A.

### 705 Searches and official certificates of search

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 2--SI 1977/985 Sch 3 amended: SI 2009/2494.

TEXT AND NOTES 10-12--Local Land Charges Act 1975 s 9(3) substituted, s 9(4) amended: Constitutional Reform Act 2005 Sch 4 para 84.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(2) LOCAL LAND CHARGES/706. Personal search.

### **706. Personal search.**

A person who wishes to make a personal search in the local land charges register<sup>1</sup>, if so requested by the registering authority<sup>2</sup>, must state his name and address and indicate the parcel of land<sup>3</sup> in respect of which he wishes to search<sup>4</sup>. A separate personal search must be made in respect of each parcel of land against which a search is required, except where for the purpose of a single transaction the search is required in respect of two or more parcels of land which have a common boundary or are separated only by a road, railway, river, stream or canal<sup>5</sup>.

1 As to the register and index see PARA 675 ante.

2 As to registering authorities see PARA 688 ante.

3 For the meaning of 'parcel of land' see PARA 705 note 14 ante.

4 Local Land Charges Rules 1977, SI 1977/985, r 11(1). As to the right to search, and as to the fees payable on personal searches, see PARA 705 ante.

5 Ibid r 11(3).

### **UPDATE**

### **705-708 Local Land Charges**

As to the specification of fees by registering authorities in England see PARA 708A.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(2) LOCAL LAND CHARGES/707. Office copies.

### **707. Office copies.**

On the written request of any person, and on payment of the prescribed fee<sup>1</sup>, the registering authority<sup>2</sup> must supply an office copy<sup>3</sup> of any registration or any document, map or plan deposited with or filed by that authority in connection with a registration<sup>4</sup>.

An office copy of an entry in any local land charges register<sup>5</sup> is admissible in evidence in all proceedings and between all parties to the same extent as the original would be admissible<sup>6</sup>.

1 For the prescribed fee see the Local Land Charges Rules 1977, SI 1977/985, r 14, Sch 3 (substituted by SI 2003/2502).

2 As to registering authorities see PARA 688 ante.

3 Any reference in the Local Land Charges Act 1975 to an office copy of an entry includes a reference to the reproduction of an entry in a register kept otherwise than in documentary form: s 16(1A) (added by the Local Government (Miscellaneous Provisions) Act 1982 s 34(e)).

4 Local Land Charges Rules 1977, SI 1977/985, r 12.

5 As to the register and index see PARA 675 ante.

6 Local Land Charges Act 1975 s 12.

### **UPDATE**

#### **705-708 Local Land Charges**

As to the specification of fees by registering authorities in England see PARA 708A.

### **707 Office copies**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--SI 1977/985 Sch 3 amended: SI 2009/2494.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(2) LOCAL LAND CHARGES/708. Protection of solicitors and others.

**708. Protection of solicitors and others.**

A solicitor<sup>1</sup>, or a trustee, personal representative, agent or other person in a fiduciary position, is not answerable in respect of any loss occasioned by reliance on an erroneous official search certificate<sup>2</sup> or an erroneous office copy<sup>3</sup> of an entry in a local land charges register<sup>4</sup>.

1 As to references to a solicitor see PARA 703 note 1 ante.

2 As to official certificates of search see PARA 705 ante.

3 As to office copies see PARA 707 ante.

4 Local Land Charges Act 1975 s 13. As to the register and index see PARA 675 ante. As to the circumstances in which compensation may be payable for loss arising from a defective local land charges search certificate see PARA 694 ante.

**UPDATE**

**705-708 Local Land Charges**

As to the specification of fees by registering authorities in England see PARA 708A.

Halsbury's Laws of England/LAND CHARGES (VOLUME 26 (2004 REISSUE))/4. SEARCHES/(2) LOCAL LAND CHARGES/708A. Specification of fees by registering authorities in England.

### **708A. Specification of fees by registering authorities in England.**

Each registering authority in England must specify fees which are to be payable by persons for services relating to local land charges which are provided to them by the authority<sup>1</sup>. Different fees may be specified for different services or descriptions of service<sup>2</sup>. A registering authority may provide for there to be services or descriptions of service in respect of which no fees are to be payable<sup>3</sup>. In specifying fees, a registering authority must secure that, taking one financial year<sup>4</sup> with another, the income from fees for each service or description of service, or for each group of services or descriptions of service that they think appropriate, does not exceed the costs of its provision<sup>5</sup>. When exercising the duty mentioned above<sup>6</sup>, a registering authority must specify the date on or after which the fees specified<sup>7</sup> are to be payable<sup>8</sup>. If any fees specified<sup>9</sup> are to be the same immediately before as immediately after the beginning of a financial year, a registering authority must publish details of those fees shortly before the beginning of the financial year<sup>10</sup>. In specifying fees or publishing details of fees, a registering authority must have regard to such guidance as the Lord Chancellor may issue<sup>11</sup>.

1 Local Land Charges Act 1975 s 13A(1) (added by Constitutional Reform Act 2005 Sch 4 para 83). The 1975 Act s 13A does not apply to any fees payable for the making of a personal search (for which see s 14(1)(h)(i)): s 13A(2) (as so added).

2 Ibid s 13A(3) (as added: see NOTE 1).

3 Ibid s 13A(4) (as added: see NOTE 1).

4 In ibid s 13A 'financial year' means a period of 12 months beginning with 1 April: s 13A(12) (as added: see NOTE 1).

5 Ibid s 13A(5) (as added: see NOTE 1).

6 I.e. the duty under ibid s 13A(1).

7 Under ibid s 13A(1).

8 Ibid s 13A(6) (as added: see NOTE 1). Where the duty under s 13A(1) is exercised by a registering authority, they must publish details of the fees specified under s 13A(1) before the date mentioned in s 13A(6): s 13A(7) (as so added).

9 Under ibid s 13A(1).

10 Ibid s 13A(8) (as added: see NOTE 1).

11 Ibid s 13A(9) (as added: see NOTE 1). That guidance (1) may also include provision concerning the manner in which fees are to be paid, and (2) may be framed by reference to guidance issued by a person other than the Lord Chancellor: s 13A(10) (as so added). The Lord Chancellor must lay before both Houses of Parliament any guidance that he issues under s 13A: s 13A(11) (as so added).

For supplementary, transitory and transitional provision with respect to s 13A see Constitutional Reform Act 2005 (Supplementary Provisions) Order 2006, SI 2006/1693.

## **UPDATE**

### **705-708 Local Land Charges**

As to the specification of fees by registering authorities in England see PARA 708A.